22

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 320.

RICHARD PREWIT AND JOSEPHINE PREWIT, APPELLANTS,

vs.

ROBERT H. WILSON, ASSIGNEE IN BANKRUPTCY OF RICHARD PREWIT.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ALABAMA.

FILED OCTOBER 28, 1878.

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a UNITED STATES OF AMERICA,
Northern District of Alabama:

Pleas had at a regular term of the circuit court of the United States of America for the northern district of Alabama, begun and held at the United States court-rooms, in the city of Huntsville, in said district, on Monday, the first day of April, in the year of our Lord one thousand eight hundred and seventy-eight, and of the Independence of the United States of America the one hundred and second year.

Present, the honorable William B. Woods, judge of said circuit court, presiding.

ROBERT H. WILSON, ASSIGNEE IN BANKRUPTCY of Richard Prewit, bankrupt, complainant,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE Prewit, and Reuben Chapman, defendants.
} 78. In equity.

1 To the honorable Richard Busthead, judge of the district court of the United States for the northern district of Alabama, sitting in equity:

Robert H. Wilson, a citizen of the State of Alabama, residing in the county of Madison, as assignee in bankruptcy of the estate of Richard Prewit, bankrupt, brings this his bill against the said Richard Prewit and his wife, Josephine Prewit, who reside in the county of Lawrence and State aforesaid, and Reuben Chapman, who resides in said county of Madison, all within said northern district.

And thereupon your orator complains and says:

1. That, on the 29th day of December, 1868, the said Richard Prewit, who was then and had been for more than six months immediately preceding a resident of said northern district, filed, in the office of the clerk of this court, his petition, praying to be adjudged a bankrupt within the perview of the act of Congress, entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that on said petition such proceedings were had as required by said act; that the said Richard Prewit was duly adjudged a bankrupt on the 31st day of December, 1868; that on the 27th day of January, 1869, your orator was duly chosen and appointed assignee in bankruptcy of the estate of said Richard Prewit, bankrupt, and a conveyance or assignment of all his estate, real and personal, was, on the same day, made to your orator by Thomas C. Fullerton, a register in bankruptcy of this court, there being no op'osing interest, and said petition having been referred to said register; and that a copy of said conveyance or assignment is herewith appended, marked Exhibit A, and prayed to be taken as a part of this bill.

2. That on the 27th day of April, 1866, the said Richard Prewit was seized and possessed in fee simple of the following lands, viz: The southwest quarter of section nineteen, and the west half of section thirty of township four, range nine west, in the said county of Lawrence, and the east half of section' twenty-four, twenty-five, and thirty-six of township four, range ten west, in the county of Franklin, State of Alabama, containing fourteen hundred and twenty-five acres, and known as the Towns plantation; the south half of the southwest quarter of section thirty-one, of township four, and the north half of the northwest quarter of section six, of township five, range nine west, in said county of Law-

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rence, and known as the Dial place; the southeast quarter of section nineteen; the east half of section thirty; the southeast, southwest, and northwest quarters of section twenty-nine; forty acres off the south side of the southwest quarter of section twenty; the west half of the northeast quarter of section thirty-one, of township four, and the southeast quarter the east half of the southwest quarter, and the southeast quarter of the northwest quarter of section seven; the west half of the southwest quarter of section eight; the east half of the northeast and southeast quarters, and the northwest quarters of the northeast quarter of section eighteen; the northeast, northwest, and southwest quarters of the northwest quarter, and the northwest quarter of the southwest quarter of section nineteen, of township five, range nine, within said county of Lawrence; and the east half of the northeast quarter of section twenty-four, of township five, range ten west, in said county of Franklin, containing about eighteen hundred and eighty-acres, and known as the Napier place; the southeast quarter of section nineteen, of township four, range eight west, in said county of Lawrence, containing about one hundred and sixty acres, and known as the Bracken tract; the northeast quarter and the south half of the northwest quarter of section thirty-two, of township four, range eight west, in said county of Lawrence, containing about two hundred and forty acres, and known as the Sanders tract; an undivided half of the west half of the southwest quarter of section twenty-nine, of township four, range eight west, containing about forty acres, situated in said county of Lawrence, and known as the Abernathy tract; one hundred and sixty acres of
2 land purchased by him in 1856 or 1857 of W. W. Downs, lying on the county line road between said counties of Franklin and Lawrence, and in the latter county, being south of the Towns place aforesaid and adjoining the same; seven hundred and sixty acres, known as the Deering place, situated in said county of Lawrence, four hundred and eighty acres of which lie north of the Memphis & Charleston Railroad, and west of Town Creek, its eastern boundary being the plantation of the late Isaac Winston, jr., its northern boundary being the plantation of Mrs. Eliza M. Madding, and its western boundary the plantations of William Hooks and Philmore King, and two hundred and eighty acres of which lies south of said railroad, and between said railroad and the wagon road, Town Creek being its western boundary, and the Ashford place, hereinafter mentioned, its eastern boundary; two hundred acres, known as the Gallegher place, purchased by him of Clinton Gallagher, and bound north by the lands of James W. S. Donnell, and situated in said county of Lawrence; seven hundred and five acres situated in said county of Lawrence, being a portion of what is known as the Ashford place, all of which lies south of the Memphis and Charleston Railroad, four hundred and sixty-five acres of which lies between said railroad and the wagon road, on the east side of Town Creek, bounded on the west by the Deering place aforesaid, and on the east by said Bracken tract, and two hundred and forty acres of which, being timbered land, is bounded north and east by the lands of J. W. S. Donnell, and on the west by the lands of John Brooks; forty acres in said county of Lawrence, bought by him of one M'Intosh, adjoining said Sanders tract, said Ashford place, and said Brooks land; and one thousand acres, situated in said county of Lawrence, purchased by him of Dr. John Mays, lying at the foot of the mountain, and bounded by the mountain on one side and by the lands of William M'Geregor on the other.

3. That on said 27th day of April, 1866, the said Richard Prewit

owned and possessed the following personal property, viz: ten mules, two horses, three horse colts, eight oxen, ten cows, ten calves, thirty hogs, fifteen plows, fifteen pairs of plantation gear, four plantation wagons, three bedsteads, three beds, and thirty-five thousand pounds of seed cotton.

4. That on the said 27th day of April, 1866, the said Richard Prewit was justly indebted to Jesse W. Garth in the sum of ten thousand eight hundred and sixty-five dollars, with interest from August 8, 1862; to John A. Lile, administrator of the estate of Thomas Lile, deceased, in the sum of thirty-seven hundred and ten dollars and ninety cents, with interest from January 12, 1862; to Oakley H. Bynum in the sum of eight thousand dollars, with interest from January 15, 1865; to Mary Wilson in the sum of twelve thousand five hundred and twenty four dollars, with interest from August 1, 1861; to Isaac N. Owen in the sum of thirty-four hundred and twenty-dollars or more; to the estate of Thomas Ashford, deceased, in the sum of ten thousand dollars; and to other persons in large sums, amounting in the aggregate to one hundred thousand dollars, which said debts are yet unpaid and duly proved against his estate in bankruptcy.

5. That on the 27th day of April, 1866, the said Richard Prewit was insolvent, and being thus indebted, and thus seized and possessed of said property, with the intent to hinder, delay, and defraud his creditors, attempted to convey said lands and said personal property to the said Josephine Prewit, by an instrument of writing purporting to be a deed of conveyance of the same to her, in consideration of marriage, subject to the payment of certain debts therein charged upon portions of said lands, of which pretended deed of conveyance, bearing that date, a copy is herewith appended, marked Exhibit B, and prayed to be taken as a part of this bill.

6. That the said Josephine Prewit and the creditors attempted to be secured in said *said* pretended deed knew of the fraudulent purpose of the said Richard, and joined in his contrivance to hinder, delay, and defraud his creditors.

7. That the debt of fifteen thousand dollars to Bradley, Wilson & Co., mentioned in said pretended deed, has been assigned to the said Reuben Chapman, who had notice, at the time said debt was assigned to him, of the fraudulent character of said pretended deed.

8. That the debt to Walker, Brickell & Lewis mentioned in said pretended deed was for writing the same has been agreed on at three thousand dollars, and paid off.

9. That said lands and personal property, so attempted to be conveyed by the said Richard to the said Josephine, included all the property he then owned; and that said lands were then and are now worth sixty-seven thousand dollars.

10. That said pretended deed of conveyance from the said Richard to the said Josephine was made without any previous contract or stipulation by her for the property therein described, was not attested by any witness, and the acknowledgment of its execution made before, and not after, its delivery to and acceptance by the said Josephine.

11. That said pretended deed of conveyance by the said Richard to the said Josephine was not a bona fide transaction, but only a fraudulent contrivance substituted in place of one previously suggested and relied on for placing his property beyond the reach of his creditors for his own use and benefit; that before the said 27th day of April, 1866, and in the latter part of the year 1865 or early part of the year 1866 the said Richard sought to secure all or a large portion of said property

rence, and known as the Dial place; the southeast quarter of section nineteen; the east half of section thirty; the southeast, southwest, and northwest quarters of section twenty-nine; forty acres off the south side of the southwest quarter of section twenty; the west half of the northeast quarter of section thirty-one, of township four, and the southeast quarter the east half of the southwest quarter, and the southeast quarter of the northwest quarter of section seven; the west half of the southwest quarter of section eight; the east half of the northeast and southeast quarters, and the northwest quarters of the northeast quarter of section eighteen; the northeast, northwest, and southwest quarters of the northwest quarter, and the northwest quarter of the southwest quarter of section nineteen, of township five, range nine, within said county of Lawrence; and the east half of the northeast quarter of section twenty-four, of township five, range ten west, in said county of Franklin, containing about eighteen hundred and eighty-acres, and known as the Napier place; the southeast quarter of section nineteen, of township four, range eight west, in said county of Lawrence, containing about one hundred and sixty acres, and known as the Bracken tract; the northeast quarter and the south half of the northwest quarter of section thirty-two, of township four, range eight west, in said county of Lawrence, containing about two hundred and forty acres, and known as the Sanders tract; an undivided half of the west half of the southwest quarter of section twenty-nine, of township four, range eight west, containing about forty acres, situated in said county of Lawrence, and known as the Abernathy tract; one hundred and sixty acres of
2 land purchased by him in 1856 or 1857 of W. W. Downs, lying on the county line road between said counties of Franklin and Lawrence, and in the latter county, being south of the Towns place aforesaid and adjoining the same; seven hundred and sixty acres, known as the Deering place, situated in said county of Lawrence, four hundred and eighty acres of which lie north of the Memphis & Charleston Railroad, and west of Town Creek, its eastern boundary being the plantation of the late Isaac Winston, jr., its northern boundary being the plantation of Mrs. Eliza M. Madding, and its western boundary the plantations of William Hooks and Philmore King, and two hundred and eighty acres of which lies south of said railroad, and between said railroad and the wagon road, Town Creek being its western boundary, and the Ashford place, hereinafter mentioned, its eastern boundary; two hundred acres, known as the Gallegher place, purchased by him of Clinton Gallagher, and bound north by the lands of James W. S. Donnell, and situated in said county of Lawrence; seven hundred and five acres situated in said county of Lawrence, being a portion of what is known as the Ashford place, all of which lies south of the Memphis and Charleston Railroad, four hundred and sixty-five acres of which lies between said railroad and the wagon road, on the east side of Town Creek, bounded on the west by the Deering place aforesaid, and on the east by said Bracken tract, and two hundred and forty acres of which, being timbered land, is bounded north and east by the lands of J. W. S. Donnell, and on the west by the lands of John Brooks; forty acres in said county of Lawrence, bought by him of one M'Intosh, adjoining said Sanders tract, said Ashford place, and said Brooks land; and one thousand acres, situated in said county of Lawrence, purchased by him of Dr. John Mays, lying at the foot of the mountain, and bounded by the mountain on one side and by the lands of William M'Geregor on the other.

3. That on said 27th day of April, 1866, the said Richard Prewit

owned and possessed the following personal property, viz: ten mules, two horses, three horse colts, eight oxen, ten cows, ten calves, thirty hogs, fifteen plows, fifteen pairs of plantation gear, four plantation wagons, three bedsteads, three beds, and thirty-five thousand pounds of seed cotton.

4. That on the said 27th day of April, 1866, the said Richard Prewit was justly indebted to Jesse W. Garth in the sum of ten thousand eight hundred and sixty-five dollars, with interest from August 8, 1862; to John A. Lile, administrator of the estate of Thomas Lile, deceased, in the sum of thirty-seven hundred and ten dollars and ninety cents, with interest from January 12, 1862; to Oakley H. Bynum in the sum of eight thousand dollars, with interest from January 15, 1865; to Mary Wilson in the sum of twelve thousand five hundred and twenty four dollars, with interest from August 1, 1861; to Isaac N. Owen in the sum of thirty-four hundred and twenty-dollars or more; to the estate of Thomas Ashford, deceased, in the sum of ten thousand dollars; and to other persons in large sums, amounting in the aggregate to one hundred thousand dollars, which said debts are yet unpaid and duly proved against his estate in bankruptcy.

5. That on the 27th day of April, 1866, the said Richard Prewit was insolvent, and being thus indebted, and thus seized and possessed of said property, with the intent to hinder, delay, and defraud his creditors, attempted to convey said lands and said personal property to the said Josephine Prewit, by an instrument of writing purporting to be a deed of conveyance of the same to her, in consideration of marriage, subject to the payment of certain debts therein charged upon portions of said lands, of which pretended deed of conveyance, bearing that date, a copy is herewith appended, marked Exhibit B, and prayed to be taken as a part of this bill.

6. That the said Josephine Prewit and the creditors attempted to be secured in said *said* pretended deed knew of the fraudulent purpose of the said Richard, and joined in his contrivance to hinder, delay, and defraud his creditors.

7. That the debt of fifteen thousand dollars to Bradley, Wilson & Co., mentioned in said pretended deed, has been assigned to the said Reuben Chapman, who had notice, at the time said debt was assigned to him, of the fraudulent character of said pretended deed.

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8. That the debt to Walker, Brickell & Lewis mentioned in said pretended deed was for writing the same has been agreed on at three thousand dollars, and paid off.

9. That said lands and personal property, so attempted to be conveyed by the said Richard to the said Josephine, included all the property he then owned; and that said lands were then and are now worth sixty-seven thousand dollars.

10. That said pretended deed of conveyance from the said Richard to the said Josephine was made without any previous contract or stipulation by her for the property therein described, was not attested by any witness, and the acknowledgment of its execution made before, and not after, its delivery to and acceptance by the said Josephine.

11. That said pretended deed of conveyance by the said Richard to the said Josephine was not a bona fide transaction, but only a fraudulent contrivance substituted in place of one previously suggested and relied on for placing his property beyond the reach of his creditors for his own use and benefit; that before the said 27th day of April, 1866, and in the latter part of the year 1865 or early part of the year 1866 the said Richard sought to secure all or a large portion of said property

from his creditors by an apparent deed of conveyance thereof to his son-in-law, one J. R. Bates, who is now dead; that he caused an account to be stated against him in favor of his said son-in-law for pretended services rendered for him by said son-in-law, making it appear by said account that he was indebted to his said son-in-law in the sum of thirty thousand dollars or more; that pretendedly in satisfaction of said indebtedness shown by said account he signed and caused to be attested by witnesses what purported to be a deed of conveyance for all or a large portion of said lands to his said son-in-law; but whether all or only a portion, and, if only a portion, what portion your orator has been unable to ascertain; that soon thereafter, and before said instrument purporting to be a deed from said Richard to said Bates was executed, the said Richard became doubtful of his ability to sustain said instrument as a deed to his said son-in-law, abandoned his previous purpose of trying to save his property under said instrument purporting to be a deed to his son-in-law, communicated his purpose to the said Josephine, informed her of his indebtedness and embarrassed condition, and induced her to join and aid him in carrying out his fraudulent purpose; that said pretended deed from said Richard to said Josephine was never delivered to the said Josephine until after their marriage, and she was then required to make a will giving the propety to the said Richard or his descendants; and that the said Richard and said Josephine, in their depositions, taken before William W. Baker, commissioner in the case of John A. Lile, adm'r, vs. them and others, then pending in the chancery court of Lawrence County, Alabama, both stated that the particular property described in said pretended deed of conveyance was not contracted or stipulated for by the said Josephine; that said pretended deed was not delivered to him before the day of his marriage, and that she knew the said Richard was embarrassed by debts, and on account of his embarrassment required a settlement of property to be made on her.

12. That said defendants pretend that the said Richard, on the said 27th day of April, 1866, owned other property, viz: 8 mules, 1 horse, 2 wagons, 15 cattle, 25 hogs, six hundred and fifty-four acres of land, being the part of the Ashford tract which lies north of the railroad, and thirty-six hundred and eighty acres of land in township five, range eight west, in said county of Lawrence, but your orator alleges that said part of the Ashford tract of land lying north of the railroad was encumbered with a vendor's lien to the full amount of its value; that said land in township five, range eight west, was of little value and had been entered at twelve and a half cents per acre; that said Richard, in the inventory of his property, annexed to his said petition in
4 bankruptcy embraced none of said property, nor any other property, except his wearing apparel, valued at fifty dollars; and that there is no deed of conveyance from the said Richard for any of said property on record or within the knowledge of your orator.

To the end, therefore, that the said defendants may, if they can, show why your orator should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information and belief, full, true, direct, and perfect answer make to such of the several interrogatories hereinafter numbered and set fourth as by the note hereunder written they are respectively required to answer, that is to say:

1. Whether the allegations of the twelve several paragraphs of this

bill are not all true? And if all are not true, which are untrue, and to what extent untrue?

2. Whether the said Reuben Chapman had not been informed that said pretended deed of conveyance from the said Richard to the said Josephine was being contested as fraudulent by creditors of the said Richard before said Bradley, Wilson & Co. debt of fifteen thousand dollars was assigned to him?

3. What said lands attempted to be conveyed to the said Josephine as aforesaid were worth on the 27th day of April, 1866, and are now worth?

4. Whether the said Richard did not cause an account to be stated against him in favor of his son-in-law, J. R. Bates; if so, when, where, in whose presence, of what items, and in what sums?

5. Whether the said Richard did not sign what purported to be a deed of conveyance of lands to his said son-in-law in consideration of the satisfaction of such pretended indebtedness; and, if so, when, where, in whose presence, and of what lands?

6. Whether the said Richard and the said Josephine did not truly state in their said depositions that said pretended deed was not delivered to her before the day of her marriage with the said Richard, that the particular property described therein had not been contracted or stipulated for by her, and that she required a settlement of property to be made on her because she knew of the said Richard's embarrassment by debts?

8. What other property than that described in said pretended deed of conveyance from the said Richard to the said Josephine he had on the 27th day of April, 1866, and what disposition has been made of it? If by deed, when, where, in whose presence executed, and what became of it?

7. When and where were the said Richard and the said Josephine married; how soon thereafter did they go to said county of Lawrence; did she soon after her said marriage sign a will; if yea, when and where, by whom written and attested, and what provisions did it make for said Richard or his des'endants?

Your orator prays that said pretended deed or conveyance from the said Richard to the said Josephine may be declared fraudulent and void, and the lands therein described decreed subject to administration as assets of the estate in bankruptcy of the said Richard, and surrendered to your orator's possession to be sold, and the proceeds of the sale thereof distributed pro rata in payment of the debts proved against the estate of said bankrupt; and that your orator shall have generally such other and further relief as the nature of his case may require.

Therefore will your honor grant unto your orator the writ of subpœna, issuing out of and under the seal of this court, to be directed to the said defendants, Richard Prewit and his wife, Josephine Prewit, and Reuben Chapman, commanding them and each of them, by a certain day and under a certain penalty therein inserted, to appear before your honor in the district court of the United States for the northern district of the State of Alabama, and then and there answer the premises and abide the order and decree of the court.

CABINESS & WARD,
Solicitors for Complainants.

5 NOTE.—The defendants, Richard Prewit, Josephine Prewit, and

Reuben Chapman, are each required to answer the interrogatories numbered, respectively, 1, 2, 3, 4, 5, 6, 7, 8.

CABINESS & WARD,
Solicitors for Complainant.

Copy of deed referred as marked Exhibit B.

STATE OF ALABAMA,
Lawrence County:

Whereas a marriage ceremony is about to be solemnized between the undersigned, Richard Prewit, of the county and State aforesaid, and Josephine Prewit, widow of the late John Prewit, of the county of Tuscaloosa, in said State; and whereas said Josephine Prewit enters into said marriage relation upon the promise of the said Richard Prewit to settle upon her by deed in writing before its solemnization the property, real and personal, hereinafter named and described; and whereas it is also stipulated and agreed as part of the contract of marriage and conveyance aforesaid between the said Richard Prewit and the said Josephine Prewit that the said Richard is to charge by covenants herein upon as much of the property hereinafter set forth and conveyed as shall be specifically designated for that purpose the payment of a debt due by said Richard Prewit to the firm of Bradley, Wilson & Co., of Huntsville, Alabama, in a sum not exceeding fifteen thousand dollars; and whereas it is also stipulated and agreed as part of the contract of marriage and conveyance aforesaid between the said Richard Prewit and the said Josephine Prewit that the said Richard is to charge by covenants herein upon the property herein set forth and conveyed, and not specifically charged with the payment of the debt aforesaid to Bradley, Wilson & Co., the payment of a debt due by said Richard to the firm of Walker, Brickell & Lewis, of Huntsville, Ala., for professional services rendered, the amount whereof being unascertained:

Now, therefore, in consideration of the promise of marriage aforesaid of the said Josephine Prewit and of its consummation by actual performance with the said Richard, and of the stipulations and agreements hereinbefore recited to charge the property hereinafter designated and described, and as hereinafter specifically recited, with the payment of the debts aforesaid due by the said Richard to the said Bradley, Wilson & Co. and to the said Walker, Brickell & Lewis, this indenture, made and entered into this the 27th day of April, in the year eighteen hundred and sixty-six, by and between the said Richard Prewit, of the first part, and the said Josephine Prewit, of the second part, witnesseth, that for and in consideration of the premises and the stipulations, covenants, and agreements aforesaid, the said Richard has this day granted, bargained, and sold, aliened and enfeoffed, and conveyed, and by these presents doth grant, bargain, and sell, alien, enfeoff, and convey unto the said Josephine Prewit, for her sole and separate use and as her sole and separate estate, discharged of all marital incidents, encumbrances, and restrictions, except as hereinafter specially and particularly nominated and appointed, the following described tracts of land, with the messuages, tenements, hereditaments, and appurtenances thereto belonging or in any wise appertaining, that is to say, the southwest quarter of section nineteen, township four, range nine west; the west half of section thirty, in township four, range nine west, situated in the county of Lawrence, in the State of Alabama aforesaid; also the southeast quar-
6 ter and the northeast quarter of section twenty-four, in township four, range ten west; the east half of section twenty-five and the

east half of section thirty-six, in the same township and range, situated in the county of Franklin, in the State aforesaid, all of the above described lands, containing, by government survey, fourteen hundred and twenty-five acres, being the plantation on which the late John L. Towns resided at the time of his death, and known as the "Towns place," except the said NE. quarter of section 24 aforesaid, which was purchased by said Prewit of R. C. Leigh; also one hundred and sixty acres of land, purchased by the party of the first part, either in 1856 or 1857, of W. W. Downs, lying on the county-line road between the counties of Franklin and Lawrence, in said State, and in the latter county, being south of the Towns place aforesaid and adjoining the same; also the south half of the southwest quarter of section thirty-one, in township four, of range nine west; and the north half of the northwest quarter of section six, in township five, of range nine west, situated in the county of Lawrence aforesaid, and being the same conveyed to the party of the first part by deed of indenture of John Dial and wife, dated the 14th day of January, 1857; and also the southeast quarter of section nineteen, the northeast quarter and the southeast quarter of section thirty; the southeast quarter and the southwest quarter, and the northwest quarter of section twenty-nine; also forty acres off the south side of the southwest quarter of section twenty, running across the entire width of said quarter section; the west ½ of the NE. ¼ of section thirty-one, all in township four, range nine west; also the southeast quarter of the northwest quarter, the east half of the southwest quarter, the northwest quarter of the southeast quarter, the SW. quarter of the SE. ¼, the east half of the southeast quarter of section seven, the west half of the southwest quarter of section eight, the northwest quarter of the northeast quarter of section eighteen, the east half of the northeast quarter of section eighteen, the east ½ of the SE. ¼ of sec. 18, the southwest quarter of the northwest quarter, the northwest quarter of the southwest quarter of section nineteen, the northwest quarter and the northeast quarter of the northwest quarter of section nineteen, all being in township five, of range nine west, and in the county of Lawrence aforesaid; and the east half of the northeast quarter of section twenty-four, in township five, of range ten west, lying in the county of Franklin, in the State of Alabama, containing in all eighteen hundred and eighty acres, being the same conveyed by deed of John S. Napier, as truste' for Mary C. Napier, and Mary C. Napier to the party of the first part, of date the 7th day of January, 1857; also seven hundred and sixty acres, known as the Deering place, situated in the county of Lawrence aforesaid, four hundred and eighty acres of which lie north of the Memphis & Charleston Railroad and west of Town Creek, its eastern boundary being the plantation of the estate of the late Isaac Winston, jr., its northern boundary being the plantation of Mrs. Eliza M. Madding, and its western boundary the plantations of William Hooks and Philemon King, and two hundred and eighty acres of which lie south of said railroad and between said railroad and the wagon road, Town Creek being its western boundary, and the "Ashford place," hereinafter conveyed, its eastern boundary; also two hundred acres, lying on Wolf Creek, in the county of Lawrence aforesaid, known as the Gallagher place, being the same purchased by the party of the first part of Clinto Gallagher, and bounded on the north by the lands of J. W. S. Donnell; also seven hundred and five acres, situated in the county of Lawrence aforesaid, being a portion of what is known as the Ashford place, all of which lies south of the Memphis & Charleston Railroad, and four hundred and sixty-five acres of which lies between said railroad and the wagon road

on the east side of Town Creek, bounded on the west by the "Deering place" aforesaid, and on the east by the Bracken tract, which is herein subsequently described and conveyed, and two hundred and forty acres of which, being timbered land, is bounded on the north and east by the lands of J. W. S. Douels, and on the west by the lands of John Brooks, the "Ashford place" aforesaid being part of the lands conveyed to the party of the first part by Thomas Ashford & wife; also what is known as the "Bracken tract," in the county of Lawrence afore-
7 said, being the southeast quarter of section nineteen, in township four, of range eight west, lying east of the "Ashford place" aforesaid and north of the wagon road aforesaid, and adjoining the town of Jonesboro, in the county aforesaid; also what is known as the "Sanders tract," situated in the county aforesaid, being the northeast quarter of section thirty-two, and the south half of the northwest quarter of section thirty-two, in township four, range eight west; also forty acres, purchased by the party of the first part of one M'Intosh, situate in the county of Lawrence aforesaid, adjoining the "Sanders tract" aforesaid and the "Ashford place" aforesaid and the lands of John Brooks aforesaid; also the undivided half of the west half of the southwest quarter of section twenty-nine, in township four, range eight west, situate in the county of Lawrence aforesaid, being owned by the party of the first part and one John T. Abernathy as tenants in common; and also one thousand acres, situate in the county of Lawrence aforesaid, being the lands purchased by the party of the first part of Dr. John Mays, lying at the foot of the mountain, and bounded by the mountain on one side and by the lands of William McGreger on the other.

An the party of the first part doth also hereby, in consideration of the premises and of the covenants and agreements aforesaid, bargain, sell, and convey unto the said Josephine Prewit the following described personal property now on the "Napier place" aforesaid, and in his possession, viz: ten mules, two horses, three horse colts, eight oxen, ten cows and ten calves, thirty head of stock hogs, fifteen plows, fifteen pairs of plantation gears, four plantation wagons, three bedsteads, three beds, and thirty-five thousaad pounds of seed cotton now being ginned on the plantation of Dr. Stephenson, in the county of Lawrence aforesaid.

To have and to hold the property aforesaid, both real and personal, with its rents, profits, and issues and all its incidents to the sole and separate use, and as the sole and separate estate of the said Josephine Prewit, without marital restraint, condition or limitation, except as now herein immediately stated, that is to say:

The said party of the first part hereby charges the debt aforesaid due by him to Bradley, Wilso & Co. aforesaid, in a sum not to exceed fifteen thousand dollars, upon that portion of the real estate hereinbefore conveyed, known and described as follows:

The southeast quarter of the northwest quarter, the east half of the southwest quarter, the northwest quarter of the southeast quarter, the southwest quarter of the southeast quarter, and the east half of the southeast quarter of section 7; the west half of the southwest quarter of section eight; the northwest quarter of the northeast quarter of section eighteen; the east half of the southeast quarter of section eighteen; the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of section nineteen; the northwest quarter and the northeast quarter of the northwest quarter of section nineteen; all in township five, of range nine west, in the county of Lawrence aforesaid; and the east half of the northeast quarter of section twenty-

four in township five, of range ten west, lying in Franklin County, Alabama, containing in all eight hundred acres, and being part of the "Napier place" aforesaid; also four hundred and eighty acres of the "Deering place" aforesaid, being that portion thereof which lies north of the Memphis & Charleston Railroad and west of Town Creek, its eastern boundary being the plantation of the estate of the late Isaac Winston, jr., its northern boundary being the plantation of Mrs. Eliza M. Maddings, and its western boundary the plantations of William Hooks and Phileman King, all in the county of Lawrence aforesaid; and also the "Gallagher tract" hereinbefore conveyed, being two hundred acres lying on Wolf Creek, in the county of Lawrence aforesaid, being the same purchased by the party of the first part of Clinton Gallagher, and bounded on the north by the lands of J. W. S. Bonnell.

And the party of the first part, in pursuance of the reservation of the right aforesaid to charge the debt aforesaid due to Walker, Brickell & Lewis upon the property hereinbefore conveyed and not specially charged with the debt aforesaid to Bradley, Wilso & Co., hereby charges the payment of the said debt to Walker, Brickell & Lewis upon the lands hereinbefore described and conveyed and known as the "Ashford place."

8

In witness of all and singular the recitals, agreements, stipulations, and covenants of the foregoing deed, the said party of the first part hereunto subscribes his name and affixes his seal at Huntsville, Alabama, this the 27th day of April, 1866.

RICHARD PREWIT. [SEAL.]

[Stamp, $40.]

STATE OF ALABAMA,
Madison County:

I, Robert D. Wilson, judge of the probate court of the county and and State aforesaid, hereby certify that Richard Prewit, of the county of Lawrence, in said State, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand at Huntsville, Ala., this 27th day of April, 1866.

R. D. WILSON,
Judge P. C.

(Endorsed:) Filed in the office of the clerk of the district court this 10th day of Dec., A. D. 1870. Lionel W. Day, clerk D. C.

9

The President of the United States to the marshal for the northern district of Alabama, greeting:

You are hereby commanded to summon Richard Prewit & his wife, Josephine Prewit, & Reuben Chapman, if to be found in your district, that they, laying aside all excuses, appear personally at the office of the clerk of the district court of the northern district of the State of Alabama, in the city of Huntsville, in said district, on the rule day, to be held on the 1st Monday in February next, to answer, plead or demur to the bill of complaint exhibited in said district court by Rob't H. Wilson, assignee in bankruptcy of Richard Prewit, complainant, against Richard Prewit & his wife, Josephine Prewit, & Reuben Chapman, defendants, a copy of which bill will be furnished on application to the clerk.

Herein fail not, and have you then and there this precept, with your return thereon endorsed.

Witness the Hon. Richard Busthead, judge of said district court, at Huntsville, in said district, this the 18th day of December, in the year of our Lord one thousand eight hundred and seventy, and of American Independence the ninety-fifth year.

Attest:

LIONEL W. DAY,
Clerk of said District Court U. S.

Issued the 18th day of December, A. D. 1870.

MEM.—The defendants are to enter their appearances and to file their answers or demurrers to said bill in the clerk's office on or before the day on which this writ is returnable, otherwise a decree pro confesso may be entered.

The marshal is required to execute this writ 20 days before the return day thereof.

(Endorsed:)

I hereby authorize and depute J. P. Bradford to execute the within summons this the 16th day of January, 1870.

E. E. DOUGLASS,
U. S. Marshal for the Nor. Dist. of Ala.

Executed by handing copies to the parties this the 16th day of Jan'y, 1870.

J. P. BRADFORD,
Special Deputy.

Received December 20th, 1870.

E. E. DOUGLASS,
U. S. M.

Original executed by serving of copies this the 16th day of Jan'y, 1870.

E. E. DOUGLASS,
U. S. M.

Filed Jan'y 25th, 1871.

LIONEL W. DAY,
Clerk D. C.

10 *Order of court.*

And afterwards, to wit, on the 15th day of May, A. D. 1871, an order was made in said cause in the words and figures following, to wit:

R. H. WILSON, ASSIGNEE, &C.,
vs.
RICHARD PREWIT AND WIFE.

Come the parties, by attorney, and on motion of the plaintiff, for good cause shown, ordered that this cause be continued to the next term of this court.

11 The answer of Richard Prewit, to the bill of *of* complaint of Robert H. Wilson, herebefore filed in the district court of the United States for the northern district of Alabama, against this defendant and others.

This defendant, reserving to himself all right of exception to the said bill of complaint, for answer theerto saith:

1. The allegations of the first paragraph of said bill are true.

2. The allegations of the second paragraph of said bill are true.

3. The allegations of the third paragraph of said bill are true.

4. Answering the allegations of the fourth paragraph of said bill, respondant says: He denies that he was legally liable on the claim of the said Jesse W. Garth; he was indebted to the said Thomas Lile, as therein charged, and to the said Ochley Bynum, as therein charged, and to the said Mary Wilson, as therein charged, and to the said Isaac N. Owen, as therein charged, and to the said Thomas Ashford, as therein charged; but whether said several liabilities aggregate, with others not nominated in said paragraph, the sum of one hundred thousand dollars, respondant does not know, and, therefore, cannot say.

5. Answering the allegations of the fifth paragraph of said bill, respondant says that he was largely involved on the said 27th day of April, 1866, and, as matters have since transpired, he was then insolvent, but he did not at that time know such to be the fact.

On that day he did convey said lands and said personal property to the said Josephine Prewit, to whom he was then engaged to be married, and he made said conveyance solely upon the considerations and for the purposes therein specially stated. Whether the copy appended to complainant's bill is a true copy of said deed, respondant cannot say, but he herewith files as part of this answer a true copy thereof, marked Exhibit O. He denies that said deed was executed with the intent to delay, hinder, and defraud his creditors, or with any other intent than those specified in the deed itself. The property so conveyed to the said Josephine was not all the property then owned by this respondant; on the contrary, he owned a large quantity of real estate, and some personal property not so conveyed.

6. Answering the allegations of the sixth paragraph of said bill, respondent says, that neither the said Josephine nor the creditors secured by said deed knew of the fraudulent purpose of respondant, and joined in his contrivance to hinder, delay, and defraud his creditors; for respondant avers that he executed said deed with no such fraudulent intent, nor for any such purpose, but solely upon the considerations and with the intent and for the purposes described by said deed itself.

7. The debt mentioned in the seventh paragraph of said bill has been assigned, as respondent is informed and believes, to the said Chapman, but he could have had no knowledge of the fraudulent character of said deed, because said deed was not fraudulent either in intent, purpose, or character.

8. The debt mentioned in the eighth paragraph of said bill, to Walker, Brickell & Lewis has been paid; it was their fee for writing said deed; said deed was conceived, written, and executed in the utmost good faith, and there was neither fraudulent aid nor contrivance connected therewith.

9. The allegations of the ninth paragraph of said bill are not true. The property conveyed by said deed was not all the property then owned by respondant, as the proof may show, nor were the lands then nor are they now worth sixty-seven thousand dollars.

10. Answering the allegations of the tenth paragraph of said bill,

respondant says, said conveyance was not made without previous contract or stipulation with the said Josephine that it should be made; it is true that the particular property therein described was not specially mentioned in the antecedent agreement, but there was an antecedent agreement between this respondent and the said Josephine that this respondent should convey to her, in consideration of marriage, a large amount of real estate and some personal property. Said deed was not attested by any witness and the acknowledgment of its execution by this
12 respondant was made on the day of its date, and before its delivery to and acceptance by the said Josephine.

11. Answering the allegations of the eleventh paragraph of said bill, respondant denies that said conveyance was not a bona fide transaction; he denies that it was a fraudulent contrivance, substituted in place of one previously suggested and relied on for placing respondant's property beyond the reach of his creditors, for his own use and benefit.

It is not true, as alleged in the said eleventh paragraph of said bill, that before the said 27th day of April, 1866, this respondant sought to secure all, or a large, or any portion of said property from his creditors by an apparent deed of conveyance thereof to his son-in-law, one J. R. Bates; nor is it true that he caused an account to be stated against himself in favor of said Bates for pretended services rendered for him by said Bates; nor is it true that he thus made it appear by said account that he was indebted to his said son-in-law in the sum of thirty thousand dollars or more; nor is it true that any of the allegations of said paragraph are true, except as herein now admitted.

The facts upon the points suggested in said paragraph are these: In November, 1865, I executed to my then son-in-law, J. R. Bates, a deed, which was attested by two witnesses, and which conveyed certain of the lands afterwards embraced in said deed of marriage settlement; the lands so embraced in said deed to Bates, and afterwards conveyed by said deed of marriage settlement, were the following:

The south half of southwest quarter of section 9, township 5, range 8 west, and the southeast quarter of section 9, township 5, range 8 west; the southwest quarter of section 4, township 5, range 8 west; the northwest quarter of section 9, township 5, range 8 west; the east half of southwest quarter of section 9, township 5, range 8 west; the southwest quarter of northwest quarter of section 10, township 5, range 8 west; the southeast quarter of section 31, township 4, range 8 west; the northeast quarter of section 32, township 4, range 8 west, and 140 acres of the Ashford tract lying south of the Memphis & Charleston Railroad, including the houses, and 65 acres of said Ashford tract lying between the Memphis & Charleston Railroad, and the public road leading from Courtland to Tuscumbia; and also 80 acres of said Ashford tract, adjoining the lands of J. W. S. Donnell, making an aggregate of about 1,045 acres. Said deed to said Bates was afterwards returned to me by him, and the contract evidenced thereby was rescinded between us. This rescision took place very shortly after the deed was executed, and said deed was until very shortly in my possession. It is now an exhibit to a deposition of mine in a cause pending in the chancery court of Lawrence County, Alabama, wherein the administrator of Thomas Lile is plaintiff, and this respondant and others are defendants; this rescision took place, and said deed was delivered & returned to me by said Bates, before my contract of marriage with the said Josephine, and before the execution by me of said marriage settlement; said deed bears date the 26th day of November, 1865, and was written by Silas M'Gehee, and attested by Hugh C. Lackey and O.

Chisholm, and is the only deed from me to said Bates so written and attested. A copy of said deed is herewith filed, marked P, and prayed to be considered part of this answer.

Said deed was intended to be in satisfaction and discharge of my indebtedness to said Bates, and upon the further consideration of the payment to me by said Bates of the difference between my indebtedness to him and the estimated value of said lands, which is shown by said deed was the sum of twenty-five thousand nine hundred & eighty dollars; when said deed was executed no formal account had been stated between said Bates and myself ascertaining my exact indebtedness to him, but it was supposed by both of us to be between seventeen and eighteen thousand dollars.

Afterwards, and in the month of July, 1866, an account was stated between said Bates and myself, by which my indebtedness was ascertained to be the sum of $18,560.80. A copy of said account is herewith filed, marked Exhibit O, and prayed to be considered part of this
13 answer; and thereupon, in payment and satisfaction of said account, I executed in July, 1866, another deed to said Bates, attested by Robert King and Oswald King, as subscribing witnesses, which was accepted and received by said Bates in satisfaction and discharge of said indebtedness. A copy of said deed is herewith filed marked Exhibit R, and prayed to be considered part of this answer. The lands so conveyed to said Bates are now in the possession of George E. Kumpe, his administrator; nor are any portion of them embraced in the said deed of marriage settlement to the said Josephine.

At the time said deed to the said Josephine was executed this respondant owned of lands not thereby conveyed, about forty-seven hundred acres, which were then worth upon an average about $3 per acre, and of personal property not thereby conveyed, respondant owned about six or seven hundred dollars in value; the aggregate value of the lands so conveyed to the said Josephine was about $43,200; of the lands so conveyed to said Josephine 2,185 acres were by said deed charged with the payment of debts to Bradley, Wilson & Co., and Walker, Brickell and Lewis, amounting to $18,000, which was more than the lands were worth upon which said debts were charged, at the date of said deed; the lands not so charged with said debts, and conveyed to said Josephine, were not worth at the extreme limit exceeding $30,000. The whole number of acres so conveyed to said Josephine, exclusive of the lands charged with the payment of said debts, was, I think, about 4,585 acres; of these 4,585 acres 1,000 acres is mountain land, which was comparatively of little value. Estimating the mountain land at $1.25 per acre, which is a full value, and the remaining 3,585 acres at $8 per acre, which is likewise a full value, the aggregate value of said 4,585 acres would be $29,930, which respondant believes is more than said land would then have brought.

The personal property conveyed by said deed of marriage settlement was then worth about $3,700 [$2,700.]

Neither of the said deeds to the said Bates was executed for the purpose or with the intent to hinder, delay, or defraud the creditors of this respondent, or to secure any portion of his property from his creditors; nor was the said account stated for any such purpose, or with any such intent, but the whole motive actuating respondant in the making of said deeds, and in stating said account was honestly and fairly, without fraudulent intent of any kind, to pay off and discharge an honest debt due by him to said Bates. Respondent denies that he ever communicated a purpose to said Josephine of trying to save his property from

his creditors. He denies that he ever had such a purpose. He did inform her that he was largely indebted, but he never in any way induced or attempted to induce her to join and aid him in carrying out any fraudulent purpose; for he again denies ever having had any such purpose. The said deed to the said Josephine was delivered to her before our marriage, and was accepted by her as a compliance with and a fulfilment of my promise to make said settlement in consideration of marriage. It is not true that the said Josephine was ever required by this respondant to make a will, giving the property so conveyed in said deed of marriage settlement to this respondant or his descendants.

On the 15th day of July, 1866, the said Josephine did make her will, a copy of which is herewith filed, marked Exhibit S, and prayed to be considered part of this answer; but respondant never requested her to make said will, or any will; never suggested to her any disposition of her property by will or otherwise, and never knew what the dispositions of said will were until in May, 1871, when the depositions of the said Josephine and this respondent were taken in the case hereinbefore referred to, of Lile, administrator, against this respondent & others, pending in the chancery of Lawrence County, Alabama, and in her said deposition the said Josephine referred to said will and appended to said deposition a copy thereof. Never until then did respondant know how said Josephine had disposed of said property.

This respondant and the said Josephine did give their deposi-
14 tion before the said Boker, as commissioner, in the case of Lile aforesaid, and in their said depositions they did state that the particular property conveyed by said deed was not contracted or stipulated for by the said Josephine. In my said deposition I stated: "There was at that time no particular description of any specified lands, but it was stated and stipulated that a large quantity of land and some personal property should be conveyed. There was then no designation of the lands by sections or parts of sections, but I stated that I would convey from 8 to 10 thousand acres of land, comprising two plantations."

I also said in my said deposition: "The personal property was not named, but it was stipulated and agreed that I should convey personal property of the character mentioned and conveyed in said deed." In my said deposition I stated that the said deed of marriage settlement was delivered to the said Josephine "before our marriage, and the same day thereof." I do not remember to have said in my said deposition that the said Josephine knew that I was "embarrassed by debts, and on account of said embarrassment required a settlement of property to be made on her." I here now state, however, that the said Josephine was informed by me that I was indebted, but not the extent of my indebtedness, for I did not then know it myself, and that knowledge partly, to some extent, influenced her in requiring said settlement. What said Josephine said in her deposition, in the several parts herein referred to, I do not remember, & therefore cannot say.

12. Answering the allegations of the 12th paragraph of said bill, respondant says that, on the said 27th day of April, 1866, when said deed of marriage settlement was executed, he owned of lands not conveyed thereby about forty-seven hundred acres, and the personal property designated in said 12th paragraph. It is true that that part of the Ashford tract lying north of the railroad was encumbered with a vendor's lien to probably the full amount of its value. The other lands were unencumbered, and altho' some portion thereof was entered at 12½ cents per acre, much of it was purchased at from $3 to $6 per acre, and was of considerable value. It is true that respondant in his inventory in

bankruptcy embraced no portion of said property. Whether respondant's wearing apparel was embraced in said schedule, and, if so, at what value, he does not remember. Respondant cannot say whether his said deed to the said Bates has ever been recorded or not.

Answering in their order the interrogatories propounded by the complainant, respondant says:

1. Except as is herein admitted in reply to the allegations of the twelve several paragraphs of said bill, they are not true; the particulars in which they are true and not true are severally stated in reply to each.

2. Said Chapman was never so informed by this respondant. If so by any one else, he is not advised.

3. This question is fully answered in reply to the 11th paragraph of said bill.

4. The account was mutually stated between the said Bates and myself, for the purpose of ascertaining my indebtedness to him. A copy of said account has already been made an exhibit to this answer, showing the items and the sums. It is without date, but my belief is that it was stated about the 1st July, 1866. It was stated at my residence in Lawrence County, Ala., and no one was present that I now remember, except said Bates and myself.

5. This respondant did execute a deed to the said Bates in satisfaction and discharge of said indebtedness, at the time or about the time of stating said account. It was attested by Robert King and Oswald King, as witnesses, and conveyed the following lands:

The 16th section, T. 5, & R. 8 W., and the S.W. quarter of sec. 21, and the N.E. quarter of sec. 28, and the S.E. quarter of sec. 21, and the N.E. quarter of sec. 21, & the S. half of the W. half of N.W. quarter sec. 15, the one half being an undivided interest in the S.W. quarter of sec. 20; all of which lies in T. 5, R. 8 W., of the meridian basis line of Huntsville; also the N.E. quarter of sec. 11; also the following described lands entered at government entry at 12½ cents per acre, to wit, the W. half of the southwest quarter of sec. 28; the E. half of the southeast quarter of sec. 29, and the N.W. quarter of sec. 27, and the N.E. quarter of sec. 28, and the west half of S.W. quarter of sec. 22, and the N.W. quarter of sec. 22, & the N.W. quarter of sec. 21, & the S. half of the N.E. quarter sec. 20, & the east half of the S.E. quarter sec. 17, & the S.W. quarter of the N.E. quarter of sec. 17, and the N. half of the N.E. quarter sec. 8, & N.E. quarter of S.W. quarter sec. 20, & the W. half of the N.W. quarter of sec. 20, & S.E. quarter of the N.E. quarter of sec. 19, & the N.E. quarter of the N.E. quarter of sec. 7, & the N.E. quarter of the S.E. quarter of sec. 7, & the N.W. quarter of the N.W. quarter of sec. 8, & the S. half of the N.W. quarter of sec. 8, & the S.W. quarter of sec. 5, & the S.E. quarter of the S.E. quarter of sec. 6, & the N.W. quarter of the S.E. quarter of sec. 6, & the N.W. quarter of sec. 18, & the S.W. quarter of sec. 7, all in township 5, R. 8 W.; also the N.E. quarter of the S.E. quarter of sec. 12, township 6, range 8 west.

6. This interrogatory is fully answered in reply to the allegations of the 11th paragraph of said bill.

7. Respondant and said Josephine were married in Tuscaloosa County, Ala., on the 6th day of May, 1866, and went to Lawrence County immediately after their marriage. She made her will on the 16 July, 1866, at her residence in said county; said will was written by L. P. Walker, and attested by him and one Levi F. Warren, and its dispositions will fully appear from an inspection thereof, a copy being made a part of this answer.

8. This question, as to real estate, is fully answered in my reply to

the 5th interrogatory; of personal property not thereby conveyed, respondant owned 6 mules; of these four died & respondent sold two. And having fully answered, he prays to be herein dismissed, &c.

WALKER & BRICKELL,
Solicitors for Defendant.

STATE OF ALABAMA,
Colbert County:

Before me, Wm. G. Sadler, an acting justice of the peace in and for said county & State, this day personally came Richard Prewit, the respondent, who makes oath that the foregoing answer is true.

RICHARD PREWIT.

Sworn to and subscribed before me this 29th day of August, 1871.

WM. G. SADLER, *J. P. C. C.*

(Endorsed:) Answer of Richard Prewit. Filed August 29th, 1871. Lionel W. Day, clerk. W. & B.

16 The answer of Josephine Prewit to the bill of complaint of Robert H. Wilson, heretofore filed in the district court of the United States for the northern district of Alabama, against this defendant and others.

This defendant, reserving to herself all right of exception to the many errors & insuffi'nces of said bill of complaint, for answer thereto saith:

1. She is advised that the allegations of the first paragraph of said bill are true.

2. She is advised that the allegations of the second paragraph of said bill are true.

3. She is advised that the allegations of the third paragraph of said bill are true.

4. She knows nothing of the allegations of the fourth paragraph of said bill, except that when said deed was executed she was informed by the said Richard Prewit that he was indebted, but to whom and in what sums respondent never knew, and whatever fact is material in this respect she requires to be proved.

5. If said Richard Prewit was insolvant on the said 27th April, 1866, this respondant was entirely ignorant of the fact, and had no reason to nor did she suspect the fact to be so. She denies that, in the conveyance aforesaid, the said Richard intended to hinder, delay, and defraud his creditors; the only intent or purpose which said Richard had which was or is known to respondent was declared in the deed itself. Whether said Exhibit B is a copy of said deed respondent does not know; but a copy thereof is an exhibit to the answer of the said Richard and she refers thereto as the proper evidence thereof.

6. Respondent had no such knowledge as is charged in the sixth paragraph of said bill, nor does she believe the creditors therein provided for had such knowledge, nor does she believe that said Richard had any such purpose or intent. If he had, it was wholly unknown to respondent, and she did not join him in any such contrivance or in any contrivance whatsoever.

7. Respondant does not know whether the debt mentioned in the seventh paragraph of said bill has been assigned to the said Chapman

or not. She denies, however, that said deed has any fraudulent character, and therefore that said Chapman had any notice thereof.

8th. The debt to Walker, Brickell & Lewis was, as respondent is informed & believes, for writing said deed, and has been paid off & discharged.

9. Said deed did not convey all the property then owned by the said Richard Prewit, nor was the property thereby conveyed worth sixty-seven thousand dollars.

10. Said deed was not made without previous contract or stipulation. It is true that the particular property thereby conveyed was not at the time of the contract to convey designated either by sections or subdivisions of sections or by exact quantity, but it was agreed by said Richard and required by this respondent that he should convey to her a large quantity of land, from six to ten thousand acres, and personal property of the character aforesaid conveyed by said deed. Said deed was not attested by any witnesses, and the acknowledgement of its execution by said Richard was before its delivery to and acceptance by this respondent.

11. Answering the allegations of the eleventh paragraph of said bill, respondant says that said deed of said Richard to her was a bona fide transaction in all things; that it was not made by said Richard for the purpose of placing his property beyound the reach of his creditors for his own use and benefit; that said Richard had not at any time prior thereto sought to secure all or any portion of said property from his creditors, by a conveyance thereof to said J. R. Bates; nor did he cause an account to be stated against him in favor of said Bates for any such purpose as that charged; nor did he execute a deed to said Bates
17 for any such fraudulent purpose. Respondent has no personal knowledge of any of these matters, but she is satisfied in her own mind that each and all of said allegations are wholly false, and she therefore denies them.

The allegation in said eleventh paragraph that said Richard informed this respondant of his fraudulent purpose to defraud his creditors, and induced her to join and aid him in carrying out the same, is wholly false. Said Richard never intimated to this respondent that he had any such purpose and she is satisfied that no such purpose was ever contemplated by him; and the only motive actuating her appertaining to said deed is declared by the deed itself. Said deed was delivered to respondant before her marriage—either on the day before or the day thereof—as to which she is not absolutely certain.

Respondent denies that she was ever required by said Richard to make a will of any kind. She did make a will on the 16th day of July, 1866, a copy of which is an exhibit to the answer of the said Richard in this cause, but said will was voluntarily made by respondent, and its dispositions were not known to said Richard until after the filing of this bill. Respondent was in delicate health at the time, and then thought, as she now does, that she had a perfect right to dispose of said property without subjecting herself to criticism.

In my said deposition taken before W. W. Baker, as commissioner, in the case of John A. Lile, adm'r, vs. said Richard Prewit, this respondent, and others, then and now pending in the chancery court of Lawrence County, Ala., this respondent, in answer to the interrogatories of the said Lile, adm'r, as to the terms of the antenuptial contract preceeding the execution of said deed of marriage settlement, said in substance, this: "Mr. Prewit proposed, if I would concent to marry him, to settle on me

a seperate estate in lands with some personal property. He said he would settle on me some eight thousand acres of land, but he did not describe it particularly or generally, except to say that it was in Franklin and Lawrence Counties, Alabama, and consisted of plantations owned by him; nor did he particularly describe the personal property, except to state its character, which he did. This was the substance of his proposition, and I cinsented to marry him if this proposition was substantially performed by him; beyond this there were no special details that I can now recall, and this is the substance of what each one said, as I am now able to remember." In my said deposition, speaking with reference to the time of the delivery of said deed of marriage settlement to me, I said, "It was delivered to me" on the day before our marriage, as I believe, in Tuscaloosa County, Alabama. Respondent does not remember to have said in her said deposition that she knew the said Richard was embarrassed by debts, and on account of his said embarrassment required a settlement of property to be made on her. Her best recollection is, and she therefore states it as a fact, that she made no such statement in her said deposition.

Respondent here states that when she contracted to mar'y said Richard, and at the time of said marriage, she had knowledge of the fact that said Richard was indebted, but she did not know its extent, nor the persons to whom he was indebted. She concented to marry said Richard only on the promises, covenants, and undertakings by him made and specially set out and stated in said deed of marriage settlement, and, but for these promises, covenants, and undertakings of the said Richard, given and made contemporaneously with her promise to marry him, and their subsequent performance by him prior to her marriage, she would not have married him. If said Richard contemplated any fraud, which however, respondent denies, she was no party to it; she had neither intent, purpose, nor wish to confederate with said Richard in fraud of his creditors, nor did the said Richard intimate or suggest such conspiracy to her. The deed of marriage settlement recites the whole contract, its purpose, its object, its consideration. There were no reserved stipulations or innominate covenants, and respondent accepted its provisions; and consum'ated her promise of marriage on the faith of it, without
18 a thought that she thereby wronged any one.

12. Respondent has no knowledge of the allegations of the 12th paragraph of said bill, beyond the fact that she was informed and believes when said marriage settlement was made that said Richard owned much other property.

Answering, in their order, the interrogatories propounded by the complainant, respondent says:

1. Except as herein admitted, in reply to the allegations of the twelve several paragraphs of said bill, they are not true; the particulars in which they are true, and not true so far as respondent has any knowledge, are stated in reply to each.

2. Respondent has no knowledge of the matter inquired after in this interrogatory.

3. Respondent cannot answer this question, as she does not know.

4. Respondent cannot answer this question, because she does not know.

5. Respondent cannot answer this question, because she does not know.

6. This question is fully answered by respondent in her reply to the allegations of the 11th paragraph of said bill.

7. Respondent and said Richard were married in Tuscaloosa County,

Ala., on the 6th day of May, 1866, and immediately thereafter went to said county of Lawrence, on the 16 day of July, 1866. Respondent made her will, at her residence in said county of Lawrence. Said will was written by L. P. Walker, and attested by him and one Levi F. Warren; the dispositions of said will will appear by reference to the will itself, a copy of which is made part of the answer of the said Richard in this cause.

8. Respondent cannot answer this question, not being informed with reference to the matters inquired after.

WALKER & BRICKELL,
Solicitors of Respondent.

THE STATE OF ALABAMA,
Colbert County:

Before me, Wm. G. Sadler, an acting justice of the peace in and for said county & State, this day personally came Josephine Prewit, the foregoing defendant, who makes oath that the foregoing answer is true.

JOSEPHINE PREWIT.

Sworn to and subscribed before me this 29th day of August, 1871.

WM. G. SADLER,
J. P. C. C.

(Endorsed:) Filed Aug. 29th, 1871. Lionel W. Day, clerk D. C.

19 In the district court of the United States, for the northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE PREWIT, and Reuben Chapman.

The replication of Robert H. Wilson, assignee of Richard Prewit, bankrupt, complainant, to the answer of Richard Prewit, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained material or effectual in the law to be replied unto, confessed and avoided, traversed or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove, as this honerable court shall direct, and humbly prays as in and by this said bill he hath already prayed.

CABINESS & WARD,
Sol's for Complainant.

(Endorsed:) Replication to answer of Richard Prewit, filed September 9th, 1871. Lionel W. Day, clerk D. C.

20 In the district court of the United States, for the northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE PREWIT, & Reuben Chapman.

The replication of Robert H. Wilson, assignee of Richard Prewit, bankrupt, complainant, to the answer of Josephine Prewit, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication, thereunto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traverses or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove, as this honerable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CABINESS & WARD,
Sol's for Complainant.

(Endorsed:) Replication to answer of Josephine Prewit. Filed September 9th, 1871. Lionel W. Day, clerk D. C.

21 In the district court of the United States for the northern district of Alabama. In chancery.

The answer of Reuben Chapman, one of the defendants, to the bill of complaint of Robert H. Wilson, as assignee in bankruptcy of the estate of Richard Prewit, bankrupt, exhibited in this honerable court against this defendant and said Richard Prewit and his wife, Josephine Prewit.

This respondent, resuming to himself all right of exception to said bill of complaint, for answer thereto, saith:

Par. 1. In answer to the first interrogatory of the said complainant's said bill, that he has been informed and believes the allegations of the first, seckond, & third paragraphs of the said complainant's said bill to be true.

Par. 2. That, as to the allegations of the fourth paragraph of the said complainant's said bill, this respondant, answering, says he knows not, and has not been informed save by said complainant's said bill, and cannot set forth as to his belief or otherwise, whether the said Richard was indebted as therein set forth on the 27th day of April, 1866. This respondent may have heard in casual conversation, the place, when, person with whom, & the time when, being now forgotton, if it ever did occur, something about the indebtedness of the said Richard and as to his being in embarrassed circumstances pecuniarily, but as to the real extent of the said Richard's indebtedness, the parties to whom he was indebted & the amount, and his capacity to discharge the same, this defendant is utterly ignorant and without knowledge in reference thereto.

Par. 3. That as to the allegations of the fifth paragraph of the said complainant's said bill, this respondent, answering, says he believes Exhibit B, appended to the said complainant's said bill, is a copy of said deed of conveyance from the said Richard to the said Josephine. This defendant knows not whether, on the 27th day of April, 1866, said Richard was insolvant and executed said deed of conveyance of said personal and real property to the said Josephine, with the intent to hinder, delay, and defraud his creditors. This defendant is informed, believes, and so alleges that the securing, in said deed of conveyance, by charging & encumbering certain portions of the real property therein particularly described, with the payment of the said debt of fifteen thousand dollars due to Bradley, Wilson & Co., was a bona-fide transaction; that the said Richard was justly and truly indebted to said Bradley, Wilson & Co., at the date of the execution of said deed of conveyance, in the sum of at least fifteen thousand dollars; that, for the purpose of securing the payment of a portion of said indebtedness, and with no intent to hinder, delay, and defraud his creditors, the said Richard created, by said deed of conveyance upon the real property therein specifically mentioned, said lien for fifteen thousand dollars, & that, upon the representations of said Bradley, Wilson & Co. that said lien was created in good faith, was a bona-fide transaction; that said Richard was justly & truly indebted to them in a sum exceeding fifteen thousand dollars, the amount secured, & was not made for the purpose of hindering, delaying, and defrauding other creditors of the said Richard, this defendant accepted an assignment of all their right, title, & interest thereto in full discharge & payment of their said indebtedness to him, amounting, at the date of said assignment, which was on the day of , 1867, to the amount of at least twenty thousand dollars.

Par. 4. That, as to the allegations of the sixth paragraph of the said complainant's said bill, this respondant, answering, says that he is informed & beleives, and upon such information and beleif denies that the said Bradley, Wilson & Co. did know of the fraudulent purpose, 22 if there was any, of the said Richard, nor did they join in his contrivance, if he had any, to hinder, delay, and defraud his other creditors. As to any knowledge by the said Josephine of the alleged fraudulent purpose of the said Richard, and her joining in his alleged contrivance to hinder, delay, and defraud his creditors, this defendant is utterly ignorant and without knowledge in relation thereto.

Par. 5th. That, as to the allegations of the seventh paragraph of the said complainants' said bill, this respondant, answering, says that the debt of fifteen thousand dollars to Bradley, Wilson & Co. was assigned to him on the day of , 1867, in discharge and payment of a debt due and owing him from them, amounting, at the date of the assignment, to at least thirty thousand dollars.

This defendant denies that he knew, at the time said debt was assigned to him, that said deed of conveyance was of a fraudulent character, on the contrary this defendant was informed and so beleived, beleives now, and so alleges, that the said deed of conveyance was a bona fide transaction as to the charging & encumbering with the payment of the said debt of fifteen thousand dollars due to Bradley, Wilson & Co. certain portions of the real property therein particularly described being based upon the fol'owing state of facts, the said Richard was justly and truly indebted to said Bradley, Wilson & Co. at the time said deed of conveyance was executed, in the sum of at least fifteen thousand dollars; and being so indebted, and desiring to secure the payment of a portion of said indebtedness, did, by said deed of convey-

ance, in good faith charge the debt aforesaid due by him to said Bradley, Wilson & Co., in a sum not to exceed fifteen thousand dollars, upon certain portions of the real property conveyed by said deed of conveyance & particularly described therein.

Par. 6th. That, as to the allegations of the eight' paragraph of the said complainants' said bill, this respondant, answering, says he knows not, and has not been informed save by the said complainants' said bill, and cannot set forth, as to his beleif or otherwise, whether the said debt to said Walker, Brickell & Lewis was agreed upon at three thousand dollars, or what was the consideration therefor.

Par. 7th. That, as to the allegations of the ninth paragraph of said complainants' said bill, this respondant answering saith he knows not, and has not been informed save by the said complainants' bill, and cannot set forth, as to his beleif or otherwise, whether the said lands and said personal property mentioned in said deed of conveyance included all the property the said Richard then owned, & whether the said lands were worth then and are now worth sixty-seven thousand dollars.

Par. 8th. That, as to the allegations of the tenth paragraph of the said complainants' said bill, this repliant, answering, saith he knows not, and has not been informed save by the said complainants' said bill, and cannot set forth, as to his beleif or otherwise, whether there was any previous contract or stipulation by the said Josephine for the property described in said deed of conveyance by the said Richard; whether said deed was attested by any witness, and whether the acknowledgement of its execution was made before and not after its delivery to and acceptance by the said Josephine, this respondant was informed at the time of the assignment of said debt of Bradley, Wilson & Co. to him, & beleived & now beleives, & upon such information denies that said deed was not executed and acknowledged in the manner prescribed by the law of the State of Alabama for the execution and acknowledgement of deeds of conveyance of real & personal property.

Par. 9th. That, as to the allegations of the eleventh paragraph of the said complainants' said bill, this respondant, answering, says he knows not, and has not been informed save by the said complainants' said bill, and cannot set forth, as to his beleif or otherwise, whether they are true or false being utterly ignorant thereof.

Par. 10th. And that, as to the allegations of the 12th paragraph of said complainants' said bill, this respondent, answering, says he knows not and has not been informed, save by the said complainants'
23 said bill, and cannot set fourth, as to his beleif or otherwise, whether they are true or false, being utterly ignorant thereof.

Par. 11th. In answer to the second interrogatory of the said complainants' said bill this respondant denies having been informed that said deed of conveyance from the said Rishard to said Josephine was being contested as fraudulent by creditors of the said Richard before said debt of said Bradley, Wilson & Co. was assigned to him.

Par. 12. In answer to the third interrogatory of the said complainants' said bill this respondant answering, says, he is an entire stranger to & unacquainted with said lands conveyed by said deed to said Josephine, & is utterly ignorant of what their value was on the 27th of April, 1866, and now is.

Par. 13. In answer to the fourth, fifth, & sixth interrogatories of the said complainants' said bill this respondant answering, says, he has answered the same as fully as he can in paragraph ninth of this his answer.

Par. 14. In answer to interrogatory seven of said complainants' said

bill this respondent answering, says that he is utterly ignorant of the place when, and the time when, the said Richard and the said Josephine were married, or how soon thereafter they went to the said county of Lawrence, or whether soon after her said marriage she signed a will, or whether she ever signed one, or if she did, what are the contents thereof.

Part 15th. In answer to the eighth interrogatory of the said complainants' said bill this respondent answering, says, he knows not and has not been informed, and cannot set forth as to his belief or otherwise whether the said Richard on the 27th day of April, 1866, had other property than that conveyed by said deed of conveyance to the said Josephine.

Par. 16th. And this respondent denies all and all manner of unlawful combination and confederacy wherewith he is by the said bill charged, without this, that there is any other matter, cause or thing in the said complainants' said bill of complaint contained, material or necessary for this defendant to make answer unto, and not herein and hereby well and sufficiently answered, confessed, traversed, and avoided, or denied, is true to the knowledge or belief of this defendant. All which matters and things this defendant is ready and willing to aver, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs & charges in this behalf most wrongfully sustained.

MILTON HUMES,
Solicitor for Defendant, R. Chapman.

Subscribed a' sworn to before me this the 15th day of September, 1871.

LIONEL W. DAY,
Clerk D. C.

(Endorsed:) Seperate answer of Reuben Chapman. Filed in clerk's office this 15th day of September, 1871. Lionel W. Day, clerk D. C. Milton Humes, solicitor.

24 In the district court of the United States for the northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE Prewit, & Reuben Chapman.

The replication of Robert H. Wilson, assignee in bankruptcy of Richard Prewit, complainant, to the answer of Reuben Chapman, defendant.

This repliant, saving and reserving to himself all and all manner of advantage of exception to the manifold insufficiencies of the said answer, for replication thereto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and 'sufficient to be replied unto by this repliant.

Without this, that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto, confessed and avoided, traversed, or denied, is true.

All which matters and things this repliant is and will be ready to aver and prove as this honorable court shall direct, and humbly prays as in and by his said bill he hath already prayed.

CABINESS & WARD,
Sol's for Complainant.

(Endorsed:) Replication to answer of Reuben Chapman. Filed October 2, 1871. Lionel W. Day, clerk D. C.

25 In the district court of the United States for the northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE Prewit, and Reuben Chapman.

The complainant in this cause desiring the evidence to be adduced therein to be taken orally under the 67th rule of the supreme court as amended, it is ordered that four days' notice shall be given by the respective counsel or solicitors to the opposite counsel or solicitors or parties of the time and place of the examination of the witnesses in this cause.

October 21, 1871.

LIONEL W. DAY,
Examiner.

(Endorsed:) As notice of time and place of examination of witnesses. Filed Oct. 21st, 1871. Lionel W. Day, clerk.

26 In the district court of the United States for the northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE Prewit, & Reuben Chapman.

To Messrs. WALKER & BRICKELL,
Sol's for Def'ts.

GENTLEMEN: You will please take notice that the complainant in the above cause desires the evidence to be adduced therein to be taken orally under the 67th rule of the Supreme Court as amended, and that by an order made in said cause by Lionel W. Day, esq., one of the examiners of said court, the examination of E. Frank Bates, John A. Lile, Hugh C. Leckey, Francis Sykes, and William W. Farth, witnesses on the part of the said complainants, will take place before said examiner, at the office of the clerk of said court, in Huntsville, Alabama, on the first day of November, 1871, at 4 o'clock p. m., and proceed as the said examiner may direct.

Yours, respectfully,

CABINESS & WARD,
Solicitors for Complainant.

(Endorsed:)
Notice as to examination of witnesses for complain't. Filed October 21st, 1871. Lionel W. Day, clerk D. C.

Received, U. S. marshal's office October 24th, 1871.
Executed by serving copy of the within on General Walker, of Walker & Brickell, in Huntsville, Ala., Oct. 24, 1871.

Z. E. THOMAS,
U. S. Marshal.

27 *Order of court.*

And afterwards, to wit, on the 28th day of October, A. D. 1876, an order was made in said cause in the words and figures following to wit:

ROBT. H. WILSON, ASSIGNEE, &C.,
vs.
RICHARD PREWIT ET ALS.

Comes the parties, by their counsel, and on motion and by consent it is ordered by the court that the time for taking testimony herein be extended until March 1st, 1877.

28 *Order of court.*

And afterwards, to wit, on the 10th day of May, A. D. 1877, an order was made in said cause in the words and figures following, to wit:

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit,
vs.
RICHARD PREWIT AND WIFE, JOSEPHINE Prewit, and Reuben Chapman.
} In chancery.

Came the parties by their solicitors, and on motion of defendants' solicitor and for good cause shown it is ordered by the court that this cause be continued.

29 In chancery, 4th district, northern chancery division of the State of Alabama.

JOHN A. LILE, ADMINISTRATOR, &C.,
vs.
RICHARD PREWIT ET ALS.

Interrogatories propounded to Richard Prewit and Josephine Prewit, defendants in said cause, whose depositions were taken in answer thereto, will be read in behalf of defendants on the hearing of said cause.

Interrogatories to Richard Prewit:

1. When and where did you mar'y the defendant, Josephine Prewit?
2. When and where did she engage to mar'y you?
3. State when you first proposed marriage to said Josephine?
4. Did the said Josephine accept or reject your first proposition of marriage?
5. Did you or not make a second proposition of marriage to said Josephine?
6. Did she accept or reject such second proposition?
7. If you say that you did make a second proposition of marriage to

said Josephine, then tell whether or not your second proposition differed in any respect from your first; and, if so, state in what respect and how it so differed.

7½. If you say that you did make a second proposition of marriage to said Josephine, state when it was made, and what it was, and her reply to the same.

8. State whether or not, when said Josephine promised to mar'y you, her promise to do so was absolute or on a condition, and, if on condition, state what that condition was.

9. If in reply to the preceeding interrogator yes you have stated that when said Josephine promised to mar'y you and as an inducement to her said promise you agreed to make a marriage settlement upon her, state whether or not you so agreed to make such settlement before your deed of conveyance to said Josephine, dated April 27th, 1866, was prepared.

10. If you say that you made such agreement or promise before said deed was prepared, state in substance what was such agreement or promise.

11. Was or not said deed prepared and executed in consequence of and to carry out such agreement?

12. When, where, and by whom was said deed of conveyance from you to said Josephine, dated April 27th, 1866, prepared or written?

13. When was said deed executed by you, and when and where was it delivered to said Josephine Prewit?

14. What was the market value at the date of said deed of the different parcels of land or plantations conveyed by said deed? State, also, the market value at said date of the several items of personal property embraced in said deed.

15. How much of the land embraced in said deed is mountain land, and what was the average value per acre at the date of said deed, of said mountain land? What was the average value per acre, at said date, of the lands other than mountain land embraces in said deed?

16. If you know of anything else material in the cause, state it fully.

WALKER & BRICKELL,
ROBINSON & WALKER,
Attorneys.

Notice and service acknowledge' April 27, 1871.

CABINESS & WARD,
Sol's for Complainants.

Interrogatories to JOSEPHINE PREWIT:

1. When and where did you marry the defendant, Richard Prewit?
2. When and where did you engage or promise to marry him?
3. When did said Richard Prewit first propose marriage to you?
4. Did you accept or reject his first proposition of marriage?
5. Did or not said Richard Prewit make to you a second proposition of marriage?
6. If so, did you accept or reject said second proposition?
7. If said Richard did make a second proposition of marriage, state whether it differed in any respect, and, if so, what, from his first proposition?
8. If you state that you accepted said Richard's second proposition of marriage, state whether or not your promise to marry said Richard was absolute or on condition, and if on condition, state what the condition was.
9. If you say that you' promised to marry said Richard was upon con-

dition, state whether that condition was performed by said Richard before your marriage? If so, when and how was it performed?

10. Would you have consented to marry said Richard Prewit without the condition named in your answer to the preceeding interrogatories?

11. If you have said that your promise to marry said Richard Prewit was made upon condition of his making a marriage settlement upon you, state whether or not you would have married him without such settlement.

12. When and where was the said Richard's deed of conveyance to you, dated April 27th, 1866, delivered to you, and by whom?

13. Was or not said deed then accepted by you as a compliance with the condition on which you had promised to marry said Richard?

14. If you know of anything else material in this cause, state it fully.

31 WALKER. BRICKELL & LEWIS,
ROBINSON & WALKER,
For Defendants.

The defendants nominate William Weeden, John D. Weeden, and John J. M'David, all of Huntsville, as commissioners to take these depositions, with power in either one of them to act.

WALKER, BRICKELL & L.,
ROBINSON & WALKER,
For Defendants.

Notice and service acknowledged April 27, 1871.

CABINESS & WARD,
For Complainants.

In chancery for the fourth district of the northern division of Alabama.

JOHN A. LILE, ADM'R, }
vs.
RICHARD PREWIT ET ALS. }

Cross-interrogatories propounded by the complainants to the defendants, Richard Prewit and Josephine Prewit, to whom the defendants have propounded interrogatories-in-chief, viz, cross-interrogatories to Richard Prewit.

1. State when, from whom, and at what price you acquired the lands described in your said deed to the defendant, Josephine Prewit.

2. What other property did you own at the date of said deed besides that described in the deed, and what was its value?

3. Did you not, as trustee for the said Josephine, give in for taxation in Lawrence County, Alabama, in in June, 1866, the lands described in said deed, and did you give in any property of your own for taxation that year? If yea, state what property and when, where, and to whom given in.

4. Give a list of the debts or legal liabilities existing against you at the date of said deed, and state to whom, in what sums, and when they were due.

5. Before the said Josephine agreed to marry you, did you inform any one that she had rejected your suit? If yea, state whom you so informed and when and where.

6. Did you mention such rejection to any one before the marriage between you? If yea, state to whom and where.

7. Did you mention such rejection to any one before the institution of this suit? If yea, state to whom and when and where.

8. With whom did the said Josephine reside at and before the marriage between you? And give the names and ages of the white members of the family, and their relationship to her.

9. Did she reside in the city of Tuscaloosa or in the country; and, if the country, how far from said city?

10. Was the agreement to settle property on her in writing or not?

11. Was there any written memorandum of the agreement?

12. Was it for the property described in your said deed to her or not?

13. Was it for any particular property?

14. Did you or the said Josephine mention said agreement to any one before your marriage? If yea, name every person to whom either of you mentioned it, and state when and where.

15. When did you procure the license for the marriage between you?

16. Did you see the said Josephine after the date of your said deed and before obtaining the marriage license? If yea, state when and where.

17. When did you go to Tuscaloosa first after the date of the deed?

18. Where were you after the date of the deed and before your next visit to Tuscaloosa County?

19. Did you not in the latter part of the year 1865, or early part of the year 1866, execute a deed to your son-in-law, J. R. Bates, written by Silas M'Gehee, and attested by Hugh Leckey and Obediah Chisholm, for the conveyance of land embraced in your said deed to said Jose-
32 phine? If yea, state when and where, and what lands were embraced.

20. Was not your said deed to J. R. Bates in satisfaction of your indebtedness to him as shown by a stated account?

21. File in answer hereto a copy of such stated account. If you cannot do that then state the amount of the indebtedness recited as the consideration of said deed to said Bates, and give the items of it.

22. Was not the defendant Walker consulted as to the amount at which said account or the items thereof could be sustained?

23. Did not the defendant Walker afterwards express dissatisfaction with the conveyance, and suggest that the only way to save the property was "to put it on a woman—a woman took it all"?

24. What became of your said deed to J. R. Bates?

25. Did you ever convey other lands to said Bates? If yea, state when and where, in whose presence. By whom was the execution of the deed *was* attested; before whom was it acknowledged, and what became of it?

26. What property did the said Josephine own at the time of the marriage between you or before? How did she acquire it, and what was it worth?

27. Did not the said Josephine, soon after the marriage between you, make a will? If yea, state when and where; by whom attested; by whom written. And what disposition did it make of the property embraced in your said deed to her?

28. Was the fifteen thousand dollars secured to Bradley, Wilson & Co. in your said deed to said Josephine all that owed them?

29. Did you agree with Joseph C. Bradley, or with the defendant, Walker, as to how much should be secured to Bradley, Wilson & Co.?

30. Have you kept accounts of the rents and profits of the property

conveyed by you to said Josephine? If yea, file a copy of such account of the rents and profits.

CABINESS & WARD,
Sol's for Complainant.

Cross-interrogatories to Josephine Prewit, viz:

1. With whom did you reside at the time of rejecting and accepting the defendant Richard Prewit's suit?
2. How far was it from the city of Tuscaloosa?
3. Give the names and ages of the members of the White family, and state their relationship to you.
4. What property did you then own; what was its value; and how did you acquire it?
5. Before your acceptance of said Richard or engagement to mar'y him, did you ever inform any one that you had rejected him? If yea, state when, where, and whom.
6. Did you ever mention such rejection to any one before your marriage to him? If yea, state when, where, and whom.
7. Did you ever mention such rejection before the institution of this suit? If yea, state when, where, and to whom.
8. Was his agreement to settle property on you in writing or not?
9. Was it to settle the particular property embraced in his deed to you?
10. Was it to settle any particular property?
11. Did you inform any person of this agreement before your marriage with him? If yea, state whom, and where and when.
12. Did you show the deed of said Richard to you to any person before or after your marriage? If yea, state when, where, and to whom.
13. Did you make a will soon after your marriage with said Richard? If yea, state when and where; by whom witnessed; by whom written. And how was the property conveyed to you by him disposed of?
14. Has the said Richard accounted to you for the rents and profits of the property? If yea, file a copy of the accounts of rents and profits rendered by him.

CABINESS & WARD,
Sol's for Complainant.

33 In chancery, for the fourth chancery district, northern division of Alabama.

JOHN A. LILE, ADMINISTRATOR OF THOMAS Lile, deceased,
vs.
RICHARD PREWIT ET ALS.

Deposition of Richard Prewit and Josephine Prewit taken upon the annexed interrogatories and cross-interrogatories before me, one of the commissioners named for the purpose.

Deposition of Richard Prewit.

Answer to first interrogatory:

1. I married the defendant, Josephine Pruit, in Tuscaloosa County, Alabama, on, I think, the 6th of May, 1866.
2. She engaged to marry me in Tuscaloosa County, Alabama, about the first of April, 1866.

3. My first proposition of marriage was made in the latter part of January or first of February, 1866, I think.

4. She at first accepted my first proposition of marriage, but very shortly thereafter rejected it and informed me by letter that she had declined the idea of marrying me. Our permanant engagement of marriage was made, as I have already stated above, about the first of April, 1866.

5. I did; about seven or eight weeks after she had informed me that she rejected my first proposition I made to her a second proposition of marriage.

6. She accepted it upon the condition that I would make a settlement of property upon her.

7. My second proposition of marriage differed from my first in this, that I accompanied my second proposition with a proposition to settle property upon her, which I had not done in my first proposition.

7¼. My second proposition of marriage was made about the first of April, 1866, and it was accepted upon the condition that I would settle property upon her. It was in substance an offer of marriage accompanied with a proposition that if she would do so I would settle property upon her. Her reply was, in substance, a promise to marry me if I would make such a settlement. The settlement proposed was to be a large amount of real estate and some personal property.

8. Her promise was not absolute, but upon a condition, and that was, that I would make the proposed settlement of property upon her.

9. I did agree to make said settlement upon her in consideration of her promise to marry me, and said agreement was made before my deed of conveyance to her, of date the 27th of April, 1866, was prepared.

10. My proposition was to settle a large amount of property upon her, particularly real estate, but I did not then specify in detail the particular description or amount of said property, but did state that I would settle upon her a large amount of real estate, consisting of several plantations & some personal property; this settlement was to be by deed executed by me and approved by her.

11. It was prepared and executed.

12. Said deed of conveyance was prepared at Huntsville, Alabama, by my attorneys Walker, Brickell & Lewis, & was executed by me at Huntsville on the 27th day of April, 1866. They were some days in its preperation, and when completed it was executed by me as aforesaid.

13. Said deed of conveyance was executed by me on the 27th day of April, 1866, and was delivered by me to the said Josephine Prewit in Tuscaloosa County, Alabama, before our marriage, either on the day thereof or the day before; she approved said deed and accepted it as a fulfilment of my promise to make a marriage settlement upon her.

14. The market value of these lands when said deed was made was about as follows: The lands described in said deed as constituting the plantation of the late John L. Towns were worth about nine thousand dollars; the Downs place was worth about one thousand dollars;
34 the Dial place was worth about one thousand dollars; the Napier place was worth about twenty-one thousand dollars; the Daering place was worth about two thousand dollars; the Gallagher place was worth about three hundred and fifty dollars; the Ashford place was worth about forty-two hundred dollars; the Bracken place was worth about one thousand dollars; the Sanders tract was worth about fifteen hundred dollars; the M'Intosh tract was worth one hundred and fifty dollars; the undivided half of the eighty acres held in common with John T. Abernathy was worth about two hundred and fifty dollars; the

Mays tract was worth about twelve hundred and fifty dollars. Of the above-mentioned lands twenty-one hundred & eighty-five acres were by the deed charged with the payment of the debts to Bradley, Wilson & Co., and Walker, Brickell & Lewis. These debts amounted to about eighteen thousand dollars, which was more than the value at the date of said deed of the lands upon which said debts were charged. The market value of the remaining lands not charged with said debts was at the date of said deed not more than thirty thousand dollars. All of these last-mentioned lands were purchased by me before the war at an aggregate cost of thirty-eight thousand nine hundred dollars. Their market value at the date of said deed was considerably less then it was when they were purchased. The estimate I have above put upon the lands not charged with the payment of said debts is a very full one, I think.

At the date of said deed there was no market for lands in the Tennessee Valley, & it is difficult to state what was their value. I doubt whether the lands last refer'ed to would have brought at forced sale at said date exceeding twenty or twenty-five thousand dollars, the whole number of acres embraced in said deed, exclusive of the land charged with the payment of said debts was, I think, about forty five hundred & eighty-five acres, and of these forty-five hundred and eighty-five acres, one thousand acres is mountain land, which was of but value, estimating the said mountain land, one thousand acres, at one dollar and twenty-five cents an acre, and the remaining thirty-five hundred and eighty-five, at eight dollars per acre, both of which are full estimates of the value of said land at the date of said deed, the aggregate value of said forty-five hundred and eighty-five acres would be twenty-nine thousand, nine hundred & thirty dollars. At the date of said deed, eight dollars per acre would have been a very high price for the twenty-one hundred and eighty acres of land, charged with the payment of the debts before mentioned.

14. The market value of the personal property conveyed by said deed at the date thereof, was about as follows: The ten mules were worth one hundred dollars each; the two horses were worth seventy-five dollars each; the three colts, thirty dollars each; the eight oxen, seventeen dollars each; the ten cows with calves, $10 each; thirty hogs, one dollar each; fifteen plows three dollars each; fifteen plow gear two dollars per pair; four wagons twenty-five dollars each; three beds & steads twenty dollars each; thirty-five thousand pounds of cotton in the seed was worth about one thousand dollars.

15. Of the lands embraced in said deed, one thousand acres is mountain land, one dollar & twenty five cents per acre would be a full average value of said mountain land, at the date of said deed. It had been entered at the land office at a " bit " per acre. The average value per acre, at the date of said deed of the land, other than mountain land embraced in said deed, did not exceed eight dollars. I doubt whether it would exceed seven dollars per acre.

16. 'Twas in my fifty-eighth year at the time of my marriage, with the said Josephine, and she was at said date about twenty years old; she was a widow without childred when I married her; we have now one child four years old, on the fourth day of May, 1871, and my wife is daily expecting to be confined.

RICHARD PREWIT.

Subscribed & sworn to before me this 3rd May, 1871.

J. D. WEEDEN,
Commissioner.

35 RICHARD PREWIT'S answers to cross-interrogatories:

1. I purchased the mountain lands of the estate of Mays, in which year I do not remember, but it was some time before the war, at, I think, the price of two dollars per acre, on three years' time. I purchased twelve hundred acres of the estate of John L. Towns, some years before the war, for twelve thousand dollars, on one, two, & three years' time. I purchased about one hundred acres of Richard Leigh, some years before the war, at thirteen dollars per acre, in one, two, and three years' time. I purchased the Napier land, eighteen hundred & eighty acres, at an aggregate cost of thirty thousand dollars, in three annual payments. One hundred & sixty acres were purchased of W. W. Downs, some years before the war, at ten dollars per acre, in one, two & three years' time. I purchased of John Dial, some years before the war, one hundred and sixty acres of said land, at ten dollars per acre, on one, two, and three years' time. The Ashford tract I bought, some years before the war, of Thomas H. Ashford, on one, two, & three years' time, at twelve dollars per acre. Two hundred and forty acres of said land I purchased, some years before the war, of Henry M'Gehee at, I think, five dollars per acre. Forty acres of said land, I purchased, some years before the war, of one M'Intosh, for one hundred dollars, I think. And one other forty acres of said land I purchased of Henry M'Gehee for two hundred dollars, according to my recollection. And one hundred & sixty acres of the estate of Bracken, some years before the war, at five dollars an acre.

2. I owned at the date of said deed lands, other than those thereby conveyed, about forty-seven hundred acres, I think. These lands wer then worth, upon an average, about three dollars per acre. I owned also some other personal property, of value six or seven hundred dollars.

3. I do not remember, distinctly, whether I gave in said lands, as trustee for the said Josephine in June, 1866, for taxation; I think it probable, however, that I did. I don't remember whether I gave in my other property for taxation or not. The assessor's books for said county will show, but they are not accessible to me this my examination.

4. It is impossible for me to give a list of the debts existing against me at the date of said deed, as I have no memorandum of them nor means by which I may refresh my memory on that subject.

5. I did inform J. R. Bates, now deceased, and Marion Warren, who now resides in Lawrence County, Alabama, and Osborn Jones, of Walker County, Alabama, that the said Josephine refused to marry me. This information I communicated to them before my second proposition of marriage, but the precise date thereof I do not remember, nor the exact locality.

6. Besides the persons named in my answer to 5th cross-interrogatory, I did, after the acceptance of my second proposition, mention said rejection of my first proposition to L. P. Walker, in Huntsville, Alabama, at the time I employed the firm of Walker, Brickell & Lewis to write said marriage settlement.

7. This cross-interrogatory is likewise answered in my previous answer.

8. The said Josephine at the time of our marriage resided with her father in Tuscaloosa County, Alabama. The White family consisted of her father, mother, three or four sisters & several brothers. I do not, however, know their ages. We were not married at her father's residence, as he was bitterly opposed to it.

9. She resided in the county about six miles from the city of Tuscaloosa.

10. The agreement was not in writing.

11. There was no written memorandum of the agreement.

12. The agreement did not designate any particular property, except that I was to convey to her a large amount of real estate and some personal property.

13. Beyond what I have heretofore stated, the agreement did
36 not particularly designate the property to be conveyed.

14. I mentioned said agreement before our marriage to J. R. Bates, who was my son-in-law, and to L. R. Walker, Brickell & Lewis, at the time I employed said firm to write said marriage settlement. I made this communication to said Walker in Huntsville, Alabama. The precise date of my communication to said Bates I do not remember; it was, however, both before and after said conveyance was written. I also mentioned this agreement to make said marriage settlement, I think, to Marion Warren, of Lawrence County, Alabama.

15. The license was procurrd for me on, I think, the 4th or 5th May, 1866.

16. I did see the said Josephine after the date of said deed, and before the marriage license was obtained. I saw her at her father's, & she then went with me to John Prewit's, six miles from her father's, to be married, and from there I sent to Tuscaloosa one Wiley Hagler, who obtained our marriage license; this was, I think, the day before our marriage.

17. I was not in Tuscaloosa until long after our marriage.

18. After said deed was made, I do not remember to have left home until I visited Tuscaloosa County, on the occasion of our marriage, reaching there, I think, on the third day of May, 1866.

19. In November, 1865, I executed to my then son in-law, J. R. Bates, a deed written and attested, as this interrogatory suggests, which did convey certain of the lands afterwards embraced in and conveyed by marriage settlement. The land embraced in said deed to Bates, and afterwards conveyed by my said deed of marriage settlement, were the following: The S. ½ of S.W. ¼ of sec. 9, T. 5, R. 8 W., & the S.E. ¼ of S.E. ¼ of sec. 9, T. 5, R. 8 W., & the S.W. ¼ of sec. 4, T. 5, R. 8 W., & the E. ½ of *of* S.W. ¼ of sec. 9, T. 5, R. 8 W., & the S.W. ¼ of N.W. ¼ of sec. 10, T. 5, R. 8 W., & the S.E. ¼ of N.E. ¼ of sec. 31, T. 4, R. 8 west, & the N.E. ¼ of sec. 32, T. 4, R. 8 W., and 140 acres of the Ashford tract, lying south of the Memphis & Charleston Railroad, including the houses. Also 65 acres of the Ashford tract, lying between the Memphis & Charleston R. road and the public road leading from Courtland to Tuscumbia. Also 80 acres of the Ashford tract adjoining the lands of J. W. S. Donnell, making an aggregate of about one thousand & forty-five acres. Said deed to said Bates was afterwards returned to me by him, and the contract evidenced thereby was rescinded between us. This rescission took place very shortly after the deed was executed, and the said deed is now in my possession. This re'cis'ion took place and said deed was delivered and returned to me by said Baites before my contract for marriage with the said Josephine, and before the execution by me of said marriage settlement. Said deed was executed in Lawrence Co., Alabama, on the 20th November, 1865, was written by Silas M'Gehee & attested by Hugh C. Lackey & O. Chisholm, and is the only deed from me to said Bates so written and attested. Said deed is filed herewith, marked O. P., and made a part of this deposition.

20. Said deed was intended to be in satisfaction and discharge of my indebtedness to said Bates, and upon the further consideration of the promised payment to me, by said Bates, of the difference between my indebtedness to said Bates and the estimated value of said lands; which

is shown by said deed was the sum of twenty-five thousand nine hundred & eighty dollars. At the time said deed was executed no formal account had been stated between us ascertaining my exact indebtedness to said Bates, but it was supposed to be, by both of us, between seventeen & eighteen thousand dollars. No payments were ever made by said Baittes.

21. When said deed was executed no account was stated between us. But afterwards, and in month July, 1866, an account was stated between us, by which my indebtedness was ascertained to be the sum of eighteen thousand five hundred & sixty dollars & eighty cents. A copy of this account is herewith filed, marked Exhibit R. S.

37 22. Said Walker was not consulted by me in the matter refer'ed to in this cross-interrogatory. If he was by said Bates I have no personal knowledge of it.

23. No such dissatisfaction was ever expressed by said Walker, as I believe or am informed, nor was any such expression as that suggested in this cross-interrogatory, so far as I think, beleive or am informed.

24. Said deed has been heretofore made a part of my deposition, the sale having been rescinded as above stated.

25. I did execute another deed to said Bates in July, 1866. This deed was attested by Oswald King & Robert King, jr., as subscribing witnesses. This deed was delivered to said Bates, & received by him in satisfaction & discharge of my indebtedness to him; and he retained possession thereof as long as he lived. The lands conveyed to said Bates by said deed are now in the possession of George E. Kumpe, as his administrator. I do not think said deed was acknowledged, though it was attested by two witnesses.

26. She had no real estate & very little personal property; the property she owned at the time or our marriage did not exceed in value one thousand dollars, & came to her, I beleive, from her father. When I married her, she was the widow of John Prewit, deceased.

27. In July, 1866, the said Josephine did make a will at our residence in Lawrence County, Alabama, which was written by L. P. Walker and attested, I beleive, by said Walker and one Levi F. Warren as subscribing witnesses. I have never read this will, and never had it read to me, & I do not know what disposition she makes of said property. All I know is, said Walker was sent for by said Josephine to make said will, and I beleive it was attested by him and said Warren; I was not in the room when it was written or attested. The said Josephine was in delicate health, and alarmed at her condition at the time of its execution.

28. At the time said deed was executed, I did not know the exact amount of my indebtedness to Bradley, Wilson & Co. I was, however, satisfied that it was not less than fifteen thousand dollars, and have understood since that it was more.

29. I never had any agreement whatever with the said Bradley, or the said Walker, as to how much should be secured to Bradley, Wilson & Co. I had never had any conversation with said Bradley with reference to said deed; and all I ever said to said Walker with reference to the debt to said Bradley, Wilson & Co. was when said deed was being prepared. I directed him to secure to said Bradley Wilson & Co. fifteen thousand dollars, by charging it upon certain lands, particularly described in said deed of marriage settlement.

30. I have never kept any account of the rents & profits of the property so conveyed by deed to said Josephine.

RICHARD PREWIT.

Sworn & subscribed before me, this 3rd day of May, 1871.
J. D. WEEDEN,
Commissioner.

38 The answer of JOSEPHINE PREWIT to the interrogatories in chief:

1. I married the defendant, Richard Prewit, on the 6th May, 1866, in Tuscaloosa County, Alabama.
2. I engaged to marry him in Tuscaloosa County, Alabama, somewhere about the first of April, 1866.
3. He first proposed marriage to me, I think, about the 1st of February, 1866.
4 I rejected this proposition, though when he first submitted it I did consent to marry him, but in a very few days I withdrew this consent and rejected the proposition.
5. Yes, he made a second proposition of marriage about the first April, 1866.
6. I accepted this proposition upon the condition he would settle property upon me.
7. This second proposition of marriage did differ from the first in this, that he accompanied it with an offer of marriage settlement, by which he proposed to convey to me a large amount of property.
8. My promise to marry said Richard was not absolute, but upon the condition stated above.
9. Said condition was performed by said Richard before our marriage. He executed the deed of marriage settlement, which is an exhibit in this case, and delivered it to me, either on the day before or the day of our marriage, as to which I am not positively certain, but certainly before the marriage, & I received and accepted the same as a performance of said promise and agreement.
10. Except upon the condition named I would not have consented to mar'y the said Richard.
11. I would not have married said Richard if he had failed or refused to make said marriage settlement.
12. It was delivered to me by the said Richard either on the day before or the day of our said marriage, in Tuscaloosa County, Alabama.
13. Said deed was accepted by me as a fuilfilment of the condition upon which I had promised to mar'y the said Richard.
14. I know of nothing else material.

JOSEPHINE PREWIT.

Sworn to & subscribed before me this 3rd day of May, 1871.
J. D. WEEDEN,
Commissioner.

39 Answers of JOSEPHINE PREWIT to cross-interrogatories.

1. I resided with my father.
2. Six miles.
3. My father, C. H. Gay, about forty-five years old; my mother, Jane Gay, about thirty-eight years old; and Ann Gay, about 18 years of age; Joshua Gay, about 16 years old; Sidney Gay, about 14 years old; Virginia Gay, about 11 years old; Buena Vista Gay, about 9 years old; Francis Gay, about 7 years old; Alabama Gay, about 5 years old; John Gay, about 3 years old; who were my brothers and sisters.
4. I then owned four head of horses, some cattle, sheep, & hogs, &

some household furniture, all amounting in value to between eight & nine hundred dollars; said property came to me from my father.

5. Before my acceptance of said Richard or engagement to marry him, upon the condition mentioned in my previous answers, I did inform my parents, and perhaps others, that I had rejected him. I think my mother saw the letter I sent to said Richard, rejecting his first proposition. I so informed my parents of my rejection of said Richard's offer of marriage about the time when such rejection took place. I so informed them at our home, in Tuscaloosa County, Alabama.

7. This cross-interrogatory is answered in my answer to the fifth cross-interrogatory.

8. It was not in writing.

9. He said he would settle on me a large quantity of land, but he did not describe it particularly, further than that it consisted of plantations owned by him in Franklin and Lawrence Counties, Alabama. He did not particularly describe the personal property, but stated its character.

10. This cross interrogatory is answered in my answer to the ninth cross-interrogatory.

11. I think I probably informed W. C. Rosamond, of Walker County, Alabama, of said agreement before my marriage with said Richard. The conversation in which I gave him this information took place in the county of Tuscaloosa, Alabama, in the month of April, 1866, I think.

12. I do not think I did; my father was violently opposed to my marriage with the said Richard, and this made me cautious of speaking about my purpose to marry him, or of any agreement between us with reference thereto.

13. I did make a will after my marriage with the said Richard; it was executed by me on the 16th day of July, 1866; it was written by L. P. Walker, and was attested by said Walker and one S. F. Warren as subscribing witnesses. It was so written, executed, and attested at my residence in Lawrence County, Alabama, and as showing what disposition it made of property so conveyed to me by marriage settlement, I herewith file a copy of said will, marked Exhibit J. P., as part of my deposition.

14. He has not.

JOSEPHINE PREWIT.

Sworn to and subscribed before me this 3rd day of May, 1871.

J. D. WEEDEN,
Commissioner.

THE STATE OF ALABAMA,
Madison County:

I, J. D. Weeden, the commissioner named for the purpose, do hereby certify that the foregoing depositions of Richard Prewit, Josephine Prewit, William Hooks, George E. Kumpe, & Henry A. M'Gehee, of whose identity I was satisfied, was taken down under oath, and nearly as practicable in the language of said witnesses; that they were read over to each of them and heard throughout by each of them & assented to & subscribed by each of them, in my presence, on the 3rd day of May, 1871, in the county of Lawrence & State of Alabama; that said deposition was never out of my possession until sealed; and that since being signed by them, they have never been in any manner changed or altered.

Witness my hand and seal this the 3rd day of May, 1871.

J. D. WEEDEN, [SEAL.]
Commissioner.

40 HUNTSVILLE, ALA., *April* 27, 1871.

The parties to this cause consent that the depositions of Richard and Josephine Prewit, William Hooks, George E. Kumpe, Henry A. M'Gehee, and Silas M'Gehee may be taken by either of the commissioners nominated on the foregoing interrogatories and cross interrogatories without commission.

CABINESS & WARD,
Sol's for Complainant.

Deed of Richard Prewit to J. R. Bates.—Exhibit O P to Richard Prewit's deposition.

This indenture, made and entered into on this 20th day of November, in the year of our Lord 1865, between Richard Prewit, of the first part, of the county of Lawrence, and State of Alabama, and James R. Bates, of the same county and State, of the second part, witnesseth that for and in consideration of the sum of twenty-five thousand nine hundred and eighty-two dollars, in hand paid at and before the sealing of these presents by the said party of the second part to the said party of the first part, and the receipt of which is hereby acknowledged, that the said party of the first part has granted, bargained, and sold, and by these presents does grant, bargain, and sell unto the said party of the second part the following tracts or parcels of land situated in said county of Lawrence, to wit: The E. ½ NE. ¼ S. 21, T. No. 5, R. 8 W.; the 16 S. T. 5, R. 8 W.; the SW. ¼ S. 5, SE. ¼ of SE. ¼ S. 6, T. 5, R. 8 W.; and the NW. ¼ of SE. ¼ S. 6, T. 5, R. 8 W.; the W. ½ NW. ¼ sec. 20, T. 5, R. 8 W.; the SE. ¼ of NE. ¼ S. 19, T. 5, R. 8. W.; the NE. ¼ of NE. ¼ of S. 7; also N. ½ of SE. ¼ S. 7, & SE. ¼ NE. ¼ S. 7; the NE. ¼ of SE. ¼ S. 7; also NW. ¼ NW. ¼ S. 8, all in T. 5, R. 8 W.; the no'e. ¼ S. 19, T. 4. R. 8 W.; the W. ½ SW. ¼ S. 28, & E. ½ SW. ¼ S. 29, T. 5, R. 8 W.; the SW. ¼ NE. ¼ S. 20, T. 5, R. 8 W.; the S. ½ SW. ¼ S. 9, T. 5, R. 8 W.; the SW. ¼ SE. ¼ S. 9, T. 5, R. 8 W.; the SW. ¼ S. 7, NW. ¼ S. 18, T. 5, R. 8 W.; the SW. ¼ NE. ¼ S. 17, T. 5, R. 8 W.; the NW. ¼ S. 4, T. 4, R. 8 W., & the SW. ¼ S. 4, T. 5, R. 8 W., and the NW. ¼ S. 9, T. 5, R. 8 W.; E. ½ SW. ¼ S. 9, T. 5, R. 8 W.; SW. ¼ NW. ¼ S. 10, T. 5, R. 8 W.; the NW. ¼ S. 22, T. 5, R. 8 W.; the NE. ¼ SE. ¼ S. 12, T. 6, R. 8 W.; the S. ½ of W. ½ of SW. ¼ S. 15, T. 5, R. 8 W.; the S. ½ E. ½ NE. ¼ S. 31, T. 4, R. 8 W.; the E. ½ SW. ¼ S. 27, T. 4, R. 8 4; the NE. ¼ S. 12, T. 5, R. 9 W.; the SW. ¼ SE. ¼ S. 7, T. 5, R. 8 W.; the NE. ¼ S. 32, T. 4, R. 8 W., except 3 acres in the SW. corner of said quarter section; one hundred and forty acres, known as the Ashford and Washington land, lying south of the Memphis & Charleston Railroad & the public road leading from Courtland to Tuscumbia, including the houses; also sixty-five acres joining the above named on the east and lying between the aforesaid roads; also eighty acres lying east of J. W. Dorales' plantation & joining his land and known as the Ashford land; also one hundred and sixty acres lying on Wolf Creek, Nos. not known; also four forty acre tracts mountain land lying in the neighborhood of Crooked Creek; also my interest in the Greenhill & Bracken land, undivided; this is one-half lying on Crooked Creek, supposed to be eighty acres, and the SE. ¼ S. 8; the S. ½ NW. ¼ S. 8, T. 8, R. 8 W.; to have and to hold the above conveyed tracts of land with all the tenements and appertenances thereunto belonging or in any wise appertaining to the only use and behalf of said party of the second part, and the said party of the first part covenants to and with the said party of the second part, his heirs, executors, and administrators the title of the above-conveyed land to warrant & forever defend.

In testimony of which the said party of the first part has hereto put his hand and affixed his seal on the day and year above mentioned.

RICHARD PREWIT. [SEAL.]

Teste:
HUGH C. LECKEY.
O. CHISHOLM.

41 SCHEDULE A.

Richard Prewit to James R. Bates, Dr.

For services rendered from 1st July, 1855, to July 1st, 1866, eleven years, at one thousand dollars per year.

For services from 1st July, 1855, to July 1st, 1856.	$1,000	
Interest for 10 years to July 1st, 1866.....	800	
		1,800
For services from July 1st, 1856, to July 1st, 1857.	1,000	
Interest for nine years to July 1st, 1866.....	720	
		1,720
For services from July 1st, 1857, to July 1st, 1858.	1,000	
Interest for 8 years to July 1st, 1866.....	640	
		1,640
For services from July 1st, 1858, to July 1st, 1859.	1,000	
Interest for 7 years to July 1st, 1866.....	560	
		1,560
For services from July 1st, 1859, to July 1st, 1860.	1,000	
Interest for 6 years to July 1st, 1866.....	480	
		1,480
For services from July 1st, 1860, to July 1st, 1861.	1,000	
Interest for 5 years to July 1st, 1866.....	400	
		1,400
For services from July 1st, 1861, to July 1st, 1862.	1,000	
Interest for 4 years to July 1st, 1866.....	320	
		1,320
For services from July 1st, 1862, to July 1st, 1863.	1,000	
Interest for 3 years to July 1st, 1866.....	240	
		1,240
For services from July 1st, 1863, to July 1st, 1864.	1,000	
Interest for two years to July 1st, 1866.....	100	
		1,100
For services from July 1st, 1864, to July, 1865....	1,000	
Interest for 1 year to July 1st, 1866.....	80	
		1,080
For services from July 1st, 1865, to July 1st, 1866.	1,000	
		1,000
		$15,400

For services of Elijah Blacksmith for 1st July, 1855, to Jan'y 1st, 1863, at $250 per year.

For services from July 1st, 1855, to July 1st, 1856.	$250	
For services from July 1st, 1856, to July 1st, 1857.	250	
Interest for 5 years & 6 months to Jan'y 1st, 1863.....	110	
		610

For services from 1st July, 1857, to July 1st, 1858.	250	
Interest 4 years 6 months to Jan'y 1st, 1863..	90	
		340
For services from July 1st, 1858, to July 1st, 1859.	250	
Interest 3 years 6 mo. to Jan'y 1st, 1863.....	70	
		320
For services from July 1st, 1859, to July 1st, 1860.	250	
Interest 2 years 6 months to Jan'y 1st, 1863.	50	
		300
For services from July 1st, 1860, to July 1st, 1861.	250	
Interest 1 year & 6 months to Jan'y 1st, 1863.	30	
		280
For services from July 1st, 1861, to July 1st, 1862.	250	
Interest on $250 for 6 months.....	10	260
	$2,110	2,110
For one horse sold you July 1st, 1855, for this amount	250	
Interest for 10 years to July 1st, 1866.....	220	
		470
	$470	
Interest on two thousand one hundred & ten dollars from 1st Jan'y, 1863, proclamation of Lincoln, to July 1st, 1866, 3 years 6 months, this amount	$590 80	590 80
		$18,560 80

(Signed) JAMES R. BATES.
RICHARD PREWIT.

42 THE STATE OF ALABAMA,
Lawrence County:

I, Josephine Prewit, wife of Richard Prewit, of said county and State, do make, declare, and publish this instrument as & for my last will and testament.

First. I direct the payment of all my just debts.

Second. In the event of my dying without leaving children of my present marriage, I give, devise, & bequeath unto D. M. Hodges, of said county and State, to hold in trust for my husband, the said Richard Prewit, all my estate, real and personal, of every kind and description, the said trustee to manage, direct, possess, & control the corpus of said property & hold the same subject & in subordination to the trusts herein created, but to pay over to the said Richard Prewit, or apply as he may direct, the annual rents, issues, & profits of said property.

Third. In the event of my dying leaving a child or children living, then, and in that event, I give, devise, & bequeath unto the said D. M. Hodges, as trustee as aforesaid, a child's part of my estate, real & personal of every kind & description, in trust for my husband, the said Richard Prewit, upon the same terms and conditions and with the same limitations and restrictions as are particularly set forth and nominated in the second clause of this my will.

Fourth. I hereby nominate & appoint my husband, the said Richard Prewit, the executor of this my last will and testament, and direct that he shall not be required to give bond as such executor.

In witness whereof I have hereto subscribed my name & affixed my seal this the 16th day of July, 1866.

JOSEPHINE PREWIT. [SEAL.]

Signed, sealed, & published by Josephine Prewit as her last will & testament, in our presence, & signed by us as subscribing witnesses thereto, at her request, in her presence, and in the presence of each other, this the 15th day of July, 1866.

L. P. WALKER.
LEVI F. WARREN, JR.

43 *Exhibit X to agreement of parties.*

This indenture, made and entered into this the 16th day of July, 1866, in the year of our Lord one thousand eight hundred and sixty-six, between Richard Prewit, of the first part, of the county of Lawrence and State of Alabama, and James R. Bates, of same county and State aforesaid, of the second part, witnesseth:

That for and in consideration of the sum of eighteen thousand five hundred and sixty dollars and eighty cents, due by account this day stated, and which is herewith filed as part of this deed, marked Schedule A, has granted, bargained, and sold, and by these presents do grant, bargain, and sell to the party of the second part the following tracts or parcels of land situated and being in said county aforesaid, to wit: The 16th section township 5, range 8 west, and the southwest quarter of section 21, and the northwest quarter of sec. 28, and the southeast quarter sec. 21, and the north half of the west half of the northwest quarter of sec. 15, and the half being and undivided interest in the southwest quarter of sec. 20, all of which lies in township 5, range 8 west of the meridian base line of Huntsville; also the northeast ¼ of section eleven; also the following described lands, entered at government entry at 12½ cents per acre, to wit, the west ½ of the southwest quarter of sec. 28, the east ½ of the southeast quarter of sec. 29, and the northwest quarter of sec. 27, and the northeast quarter of sec. 28, and the west ½ of southwest quartion of sec. 22, and the northwest quarter of sec. 21, and the south half of the northeast quarter of sec. 20, and the east half of southeast quarter of sec. 17, and the southwest quarter of the northeast quarter of sec. 17, and the north half of the northeast quarter sec. 8, and the northeast quarter of the southwest quarter of sec. 20, and the west half of the northwest quarter sec. 20, and the southeast quarter of the northeast quarter of section 19, and the northeast quarter of the northeast quarter of sec. 7, and the northeast quarter of the southeast quarter of sec. 7, and the northwest quarter of the northwest quarter of sec. 8, and the south half of the northwest quarter of sec. 8, and the southwest quarter sec. 5, and the southeast quarter of the southeast quarter of sec. 5, and the northwest quarter of the southeast quarter of sec. 6, and the northwest quarter of sec. 18, and the southwest quarter of sec. 7, all in township 5, range 8 west; also the northeast quarter of the southeast quarter sec. 12, township 6, range 8 west. To have and to hold the above conveyed lands, with all tenements and appurtenances thereunto belonging or in anywise appertaining to the only proper use and behalf of the said party of the second part, his heirs and assignees forever; and the said party of the first, for himself, his heirs, executors, and administrators, the title of the above described lands to warrant and forever defend.

In testimony whereof the said party of the first part has hereunto put his hand and affixed his seal this day and year above written.

RICHARD PREWIT. [SEAL.]

Attest:

OSWALD KING.
ROBT. KING, JR.

44 In the circuit court of the United States for the northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE PREWIT, and Reuben Chapman.

It is agreed between the parties to this cause that on the hearing thereof, the defendants may read as evidence the depositions of the defendants, Richard Prewit and Josephine Prewit, taken by John D. Weeden, commissioner, on May 3, 1871, in the cause of John A. Lile, adm'r of Thomas Lile, vs. Richard Prewit & wife et als., in the chancery court for the fourth district of the northern division of Alabama, hereto appended, and that the same, when produced and offered, shall be taken and held to be evidence in this cause, regularly taken; and it is further agreed between the parties that on the hearing of this cause it shall be admitted as facts duly proved in the cause, subject to any legal objection to admissibility as evidence, viz, that Exhibit B to complainant's bill is a correct copy of the deed of marriage settlement assailed, and that the property embraced therein was worth as follows, viz, the entire lands embraced, forty-three thousand and three hundred dollars; that portion of the lands not charged with payment of debts, thirty thousand dollars; and the personal property twenty-seven hundred and seventy-six dollars.

2. That at the date of said marriage settlement said Richard Prewit was indebted as set forth in the schedule annexed to his petition in bankruptcy to the amount of seventy-two thousand dollars, besides the debts recited in the deed of marriage settlement.

3. That on June 25, 1866, said Richard Prewit gave in the lands in Lawrence County for taxation as the property of said Josephine Prewit, and gave in no property of his own for taxation for that year.

4. That Exhibit X hereto is a correct copy of a deed of conveyance executed by said Richard Prewit to James R. Bates on July 16, 1866, referred to in the answer of said Richard Prewit to the twenty-fifth cross-interrogatory in his said deposition, and that the value of the lands embraced therein was two dollars per acre. It is also admitted that Schedule A to said Prewit's deposition is a copy of the account as stated between him and J. R. Bates, and was the recited consideration for the deed of said Prewit to said Bates, and that said deed was executed on the day of its date, the 16th of July, 1866, and Exhibit X to agreement of parties is a copy of said deed.

It is also admitted that the debt described in the marriage settlement as due to Bradley, Wilson & Co. is now owned by Chapman, and was a bona fide and subsisting debt; it is also admitted that the debt described in said marriage settlement as due to Walker, Brickell & Lewis was a bona fide and subsisting debt, and that it was afterwards settled at $3,000, and was paid; it is also admitted that Exhibit J. P. to the de-

position of Josephine Prewit is a copy of her will, and bears its correct date; it is also admitted that Exhibit O. P. to Richard Prewit's deposition is the original of the deed first made by him to J. R. Bates, and which he states in his deposition was surrendered by said Bates to him; it is also admitted that the averments of the answer of the defendant Chapman, as to the bona fides of his claim and the transfer to him by Bradley, Wilso' & Co., and his want of knowledge or notice of any fraud or bad faith, are true, & may be used as evidence in this cause for him.

And it is further agreed that this agreement shall in no way affect or impair the legal effect of the answer of the defendant Chapman, as evidence for him.

CABINESS & WARD,
Sol's for Comp'nts.

L. P. Walker, for Prewit & wife.
Milton Humes, sol. for det't Chapman.

(Endorsed:) Agreement of parties. Filed in clerk's office this 10 day of May, 1877. A. W. M'Cullough, clerk.

45 In chancery for the third district of the northern division of Alabama, May term, 1873.

JOHN A. LILE, ADM'R OF THOMAS LILE,
vs.
RICHARD PREWIT & WIFE ET ALS.

This cause is submitted for decree in vacation as of this term of the court, to be argued at Tuscumbia on July 3, 1872, or such other time and place as the chancellor shall appoint, if not argued then.

The complainant offers as testimony the bill of complaint, with the amendments and exhibits thereto. Complainant's letters of administration on the estate of Thomas Lile, and transcript of the record of his appointment and qualification, the two bonds or evidence of debt on which this suit is founded, schedule of property and debts annexed to petition of defendant, Richard Prewit, in bankruptcy, a copy of deed of conveyance executed by said Richard Prewit to J. R. Bates, in July, 1866, and the deposition of William W. Garth, Hugh C. Leckey, Francis W. Sykes, Henry C. Speak, and Thomas Lile, with the exhibits thereto, taken for the complainant.

And the defendants offer as testimony the answers of the defendants and exhibits thereto, and the depositions and exhibits thereto of Richard Prewit, Josephine Prewit, William Hooks, Henry A. McGee,
46 George E. Kemp, David C. Humphreys, Richard O. Pickett, Edward A. Oneal, and John Foster, taken for the defendants.

It is admitted by the parties that, at the time of the date of the marriage settlement, said Richard Prewit was in debted to Bradley, Wilson & Co. in the sum of eighteen thousand dollars, and also to the estate of Thomas Ashford in the sum of six thousand dollars, with interest from March 1, 1858.

All exceptions which were made by either party at the taking of any of the depositions are also made a part of this submission, and the same need not be separately set forth or stated, but are to be treated as if distinctly and separately made and submitted. In like manner the exceptions to testimony filed by the defendant Josephine Prewitt are also made part of this submission, and said exceptions shall, on hearing

hereunder, be heard and considered by the court. The said copy of conveyance of Richard Prewit to J. R. Bates, in July, 1866, is to be subject to all objections and exceptions which could be made to the original, and the admissibility of the same as evidence against the defendant Josephine Prewit shall be heard and considered by the court.

The depositions of Obediah Chisholm, L. P. Walker, L. P. Walker, Joseph C. Bradley, Richard Prewit, and Josephine Prewit, taken by complainant, are not offered in evidence by him, and the same are
47 not evidence under this submission, 22 May, 1872.

Ward Moore & et als, for pl'ff.

Walker & Brickell, Roberson & Walker, for def'ts.

Filed May 22, 1872.

JOHN PHELAN, *Reg'r.*

Exceptions of defendant, Josephine Prewit, to evidence offered by complainant.

48 In chancery. 3 district, northern chancery division of Alabama.

JOHN A. LILE, ADM'R, &C.,
vs.
RICHARD PREWIT ET ALS.

Said defendant, Josephine Prewit, objects and excepts to the answer of Richard Prewit to the 19th cross-int'y propounded by complainant, because the same is illegal & irrelevant evidence as to this defendant.

Said defendant, Josephine Prewit, separately objects & excepts to the answer of said Richard Prewit to the 20th, 21st, 22d, 23d, 24th, & 25th cross-interrogatories propounded by complainant, because said answers are each and all illegal & irrelevant evidence as to this defendant.

Said defendant objects & excepts to 1st paragraph of answer of Silas McGee to 4th int'y in chief, because the same is illegal & irrelevant as evidence against this defendant.

Said defendant objects & excepts to that part of the answer of F. W. Sykes to 3d interrog. in chief, which commences with the words "about that date," and ends with the words "Josephine Prewit," because the said part of said answer is illegal and irrelevant as evidence against this defendant, and because the same is hearsay evidence.

Said defendant, Josephine, objects & excepts to the schedule of property and debts annexed to petition of defendant, Richard Prewit,
49 in bankruptcy, and offered in evidence by complainant, because said schedules are illegal & irrelevant evidence as to this defendant, and she separately objects to each of said schedules for the same reason.

Said defendant, Josephine Prewit, objects & excepts to the copy of deed of conveyance executed by said Richard Prewit to J. R. Bates, in July, 1866, offered in evidence by complainant, because the same is illegal & irrelevant evidence as to this defendant.

WALKER & BRICKELL, &
ROBINSON & WALKER,
Solicitors for Defendant Josephine Prewit.

Said defendant also excepts to the deed of Richard Prewit to J. R.

Bates, made an exhibit to Richard Prewit's deposition, because the same is illegal & irrelevant evidence against this defendant.

WALKER & BRICKELL,
ROBINSON & WALKER,
For Def't.

Filed in my office this 22 May, 1872.

JOHN PHELAN, *Reg'r.*

50 The separate answer of Josephine Prewit, wife of Richard Prewit, to the original and amended bills filed against her and others by John A. Lile, as administrator of Thomas Lile, in the chancery court of Lawrence County, Alabama.

For answer, first, to the original bill, she says that she knows nothing of the alleged facts in the first paragraph thereof, and, if necessary, requires them to be proved.

For answer to the allegations of the second paragraph thereof, she says that she knows nothing of the facts therein alleged, and, if necessary, requires them to be proved.

To the allegations of the third paragraph thereof she states that on the 27th day of April, 1866, in fulfillment and performance of promises, covenants, and undertakings, by him previously made and assumed, her husband, the said Richard Prewit, made and executed a deed of conveyance of property therein specifically set out and described to the sole and separate use and as the sole and separate estate of this respondent. Whether Exhibit B to the complainant's bill be a true copy thereof, respondent is unable to say, but she has seen and read Exhibit M to the answer of her husband, the said Richard Prewit, in this cause, which respondent says is a true copy of said deed of conveyance. What said property was worth at the date of said deed, and what it was estimated at by the said Richard
51 Prewit, said respondent does not know, and therefore cannot say. But that said deed was executed with the intent to hinder, delay, and defraud the creditors of the said Richard, or that said property was fraudulently conveyed or attempted to be fraudulently conveyed, is utterly false. For further answer to the allegations of said par'graph, respondent says that said deed does not convey, as she is informed and believes, all the property, real and personal, of the said Richard.

For answer to the allegations contained in the fourth paragraph of said bill, respondent says that neither she, nor, as she believes, the said Bradley, Wilson & Co., nor the said Walker, Brickell & Lewis, at the time of the execution of said deed, knew that the said Richard executed the same for the purpose of hindering, delaying, and defrauding, and with the intent to hinder, delay, and defraud his creditors. Nor does she believe, and therefore she denies, that such was the intent and purpose of the said Richard, in the execution of said deed.

For answer to the allegations of the fifth paragraph of said bill, respondent says that she believes the fee of Walker, Brickell & Lewis, provided for and protected by said deed, was for preparing and writing the same.

For answer to the allegations of the sixth paragraph of said bill, respondent says that Walker, Brickell & Lewis did not combine and confederate with the said Richard and respondent to hinder, delay,
52 and defraud the creditors of the said Richard, nor to hinder, delay, and defraud the complainant of his debt aforesaid. Nor did

this respondent combine and confederate with the said Richard for this or any other purpose, in derogation of the rights of the creditors of the said Richard, generally, or of this complainant in particular.

To the allegations contained in the seventh paragraph of said bill, respondent says that at the time of the execution of said deed, as well as at the time she contracted to marry the said Richard, she knew that he was embarrassed and indebted; but to what extent and to whom she did not then and does not now know. Whether the character and extent of his indebtedness was known to the said Bradley, Wilson & Co., or to the said Walker, Brickell & Lewis, respondent is not advised, and therefore cannot say; but respondent avers that it was because of her knowledge of the embarrassed condition of the said Richard that she stipulated, at the time of her engagement of marriage aforesaid, for the promises, covenants, and undertakings of the said Richard, particularly set out and described in the deed of conveyance aforesaid.

For answer to the allegations contained in the eighth paragraph of said bill, respondent says that said deed is valid in law; that said deed was not made with the intent to hinder, delay, and defraud the creditors of the said Richard, nor with the intent to hinder, delay, and de-
53 fraud the creditors of the said Richard, nor with the intent to hinder, delay, and defraud the complainant of his debt aforesaid, nor did said Richard, by the said deed, fraudulently transfer or attempt fraudulently to convey to this respondent the property therein described for the purpose of hindering, delaying, and defrauding the complainant of his debt aforesaid.

For answer to the allegations of the ninth paragraph of said bill, respondent says she has no knowledge of the matters charged, and therefore cannot further answer.

To the allegations of the amended bill of complaint, not paragraphed, respondent says that she has seen and read the answer of her husband, the said Richard Prewit, to the original and amended bills, and particularly his answer to the several allegations of the said amended bill, and she adopts and makes his answer to the same hers.

But by way of special statement she adds, that she consented to marry the said Richard only on the promises, covenants, and undertakings by him made and specifically set out and stated in the deed of conveyance aforesaid, and but for the promises, covenants, and undertakings of the said Richard, given and made contemporaneously with her promise to marry him, and this subsequent performance by him, prior to her marriage, she would not have married him.

She would be false to her nature if she did not admit both affection and respect for him, but these, though they sanction to her con-
54 science the contract of marriage, did not alone superinduce either her promise to marry him or its subsequent consum'ation. These were the results of his promises aforesaid, and their fulfillment by the execution of said deed of conveyance. When she contracted to marry said Richard, and at the time of their marriage, she had knowledge of the fact that the said Richard was indebted, but she had no knowledge of the debt claimed by complainant.

If the said Richard contemplated any fraud, which, however, she denies, for she never believed it, she was not a party to it. She had neither interest, purpose, or wish to confederate with said Richard in fraud of his creditors, nor did her husband ever intimate or suggest such conspiracy to her. The deed of marriage settlement recites the whole contract between them, its purposes, its objects, and its consideration; there were no reserved stipulations and no secret covenants, and

respondent accepted its provisions and consummated her promise of marriage on the faith of said deed, without a thought that she thereby wronged any one.

And having fully answered said bill, respondent demurs thereto and for cause of demurrer sets down the following:

There is no equity in said bill.

WALKER, BRICKELL & LEWIS,
Solicitors for Mrs. Prewit.

Filed in my office this 17th Dec'r, 1866.

J. H. HANSELL, *Reg'r.*

55 STATE OF ALABAMA,
Lawrence County:

Whereas a marriage ceremony is about to be solemnized between the undersigned Richard Prewit, of the county and State aforesaid, and Josephine Prewit, widow of the late John Prewit of the county of Tuscaloosa, in said State; and whereas said Josephine Prewit enters into said marriage relation upon the promise of said Richard Prewit, to settle upon her by deed in writing before its solemnization, the property, real and personal, hereinafter named and described; and whereas it is also stipulated and agreed as part of the covenant of said marriage and conveyance aforesaid, between the said Richard Prewit and the said Josephine Prewit, that the said Richard is to charge by covenants herein upon so much of the property hereinafter set forth and conveyed as shall be specifically designated for that purpose the payment of a debt due by said Richard Prewit to the firm of Bradley, Wilson & Co., of Huntsville, Alabama, in a sum not exceeding fifteen thousand dollars; and whereas it is also stipulated and agreed as part of the covenant of marriage and conveyance aforesaid between the said Richard Prewit and the said Josephine Prewit, that the said Richard is to charge by covenants herein upon the property herein set forth and conveyed, and not specifically charged with the payment of the debt aforesaid to Bradley, Wilson & Co. the payment of a debt due by said Rich-
56 ard to the law-firm of Walker, Brickell & Lewis, of Huntsville, Ala., for professional services rendered, the amount whereof being unascertained:

Now, therefore, in consideration of the promise of marriage aforesaid of the said Josephine Prewit and of its consum'ation by actual performance with the said Richard and of the stipulations and agreements hereinbefore recited to charge the property hereinafter designated and described, and as hereinafter specially recited, with the payment of the debts aforesaid due by the said Richard to the said Bradley, Wilson and Co. and to the said Walker, Brickell and Lewis, this indenture made and entered into this the 27th day of April, in the year eighteen hundred and sixty six, by and between the said Richard Prewit of the first part, and the said Josephine Prewit of the second part, witnesses that for and in consideration of the promises and the stipulations, covenants, and agreements aforesaid, that the said Richard has this day granted, bargained, and sold, aliened, and enfeoffed and conveyed, and by these presents doth grant, bargain, and sell, alien, enfeoff, and convey unto the said Josephine Prewit for her sole and separate use, and as her sole and separate estate, discharged of all marital incidents, incumbrances, and restrictions, except as hereinafter specially and particularly nominated and appointed, the following described tracts of land with
57 the messuages, tenements, hereditaments, and appurtenances

thereto belonging or in any wise appertaining; that is to say, the southwest quarter of section nineteen, township four, range nine west, the west half of section thirty, in township four, range nine west, situated in the county of Lawrence, in the State of Alabama aforesaid; also the southeast quarter and the northeast quarter of section twenty-four, in township four, range ten west; the east half of section twenty five and the east half of section thirty-six in the same township and range, situated in the county of Franklin, in the State aforesaid; all of the above described lands containing by government survey fourteen hundred and twenty-five acres, being the plantation on which the late John S. Towns resided at the time of his death, and known as the "Towns place," except the said N. E. ¼ of section 24 aforesaid, which was purchased by said Prewit of R. C. Leigh; also one hundred and sixty acres of land purchased by the party of the first part, either in 1856 or 1857 of W. W. Downs, lying on the county line road between the counties of Franklin and Lawrence, in said State, and in the latter county, being south of the Towns place aforesaid and adjoining the same; also the south half of the southwest quarter of section thirty-one, in township four of range nine west, and the north half of the northwest quarter of section six, in township five, of range nine west, situated in the county of Lawrence aforesaid, and being the same conveyed to the party of the first part,
58 by deed of indenture of John Dial and wife, dated the 14th day of January, 1857; also the southeast quarter of section nineteen, the northeast quarter and the southeast quarter of section thirty, the southeast quarter and the southwest quarter and the northwest quarter of section twenty-nine; also forty acres off the south side of the southwest quarter of section twenty, running across the entire width of said quarter section; the west half of the northeast quarter of section thirty-one, all in township four, range nine west; also the southeast quarter of the northwest quarter, the east half of the southwest quarter, the northwest quarter of the southeast quarter, the southwest quarter of the southeast quarter, the east half of the southeast quarter of section seven, the west half of the southwest quarter of section eight; the northwest quarter of the northeast quarter of section eighteen, the east half of the northeast quarter of section eighteen, *the east half of the northeast quarter of section eighteen*, the southwest quarter of the northwest quarter, the northwest quarter of the southwest quarter of section nineteen, the northwest quarter and the northeast quarter of the northwest quarter of section nineteen, all being in township five, of range nine west, and in the county of Lawrence aforesaid; and the east half of the northeast quarter of section twenty-four, in township five, of range ten west, lying in the county of Franklin, in the State of Alabama,
59 containing, in all, eighteen hundred and eighty acres, being the same conveyed by deed of John S. Napier, as trustee for Mary C. Napier, to the party of the first part, of date the 7th day of January, 1857.

Also seven hundred and sixty acres known as the "Dearing place," situated in the county of Lawrence aforesaid, four hundred and eighty acres of which lie north of the Memphis and Charleston Railroad, and west of Town Creek, its eastern boundary being the plantation of the estate of the late Isaac Winston, jr., its northern boundary being the plantation of Mrs. Eliza M. Madding, and its western boundary the plantation of William Hooks and Philemon King, and two hundred and eighty acres of which lie south of said railroad, and between said railroad and the wagon road, Town Creek being its western

ern boundary, and the Ashford place, hereinafter conveyed, its eastern boundary.

Also two hundred acres lying on Wolf Creek, in the county of Lawrence aforesaid, known as the Gallagher place, being the same purchased by the party of the first part of Clinton Gallagher, and bounded on the north by the lands of J. W. S. Donnell.

Also seven hundred and five acres situated in the county of Lawrence aforesaid, being a portion of what is known as the Ashford place, all of which lies south of the Memphis and Charleston Railroad, and four hundred and sixty-five acres of which lies between said railroad and the
60 wagon road on the east side of Town Creek, bounded on the west by the Dearing place aforesaid, and on the east by the Bracken tract, which is herein subsequently described and conveyed, and two hundred and forty acres of which being timbered land, is bounded on the north and east by the lands of J. W. S. Donnell, and on the west by the lands of John Brooks, the Ashford place aforesaid being part of the lands conveyed to the party of the first part by Thomas Ashford and wife.

Also what is known as the Bracken tract, in the county aforesaid, being the southeast quarter of section nineteen, in township four, of range eight west, lying east of the Ashford place aforesaid, and north of the wagon road aforesaid, and adjoining the town of Jonesboro', in the county aforesaid.

Also what is known as the Sanders tract, situated in the county aforesaid, being the northeast quarter of section thirty-two, and the south half of the northwest quarter of section thirty-two, in township four, range eight west.

Also forty acres purchased by the party of the first part of one McIntosh, situated in the county of Lawrence aforesaid, adjoining the Sanders tract aforesaid and the Ashford place aforesaid and the lands of John Brooks aforesaid.

A'so the undivided half of the west half of the southwest quarter of section twenty-nine in township four, range eight west, situated in the county of Lawrence aforesaid, being owned by the party of the first part and one John T. Abernathy as tenants in common.

And also one thousand acres situated in the county of Law-
61 rence aforesaid, being the lands purchased by the party of the first part of Dr. John Mays, lying at the foot of the mountain, and bounded by the mountain on the one side and by the lands of William McGregor on the other.

And the party of the first part doth also hereby, in consideration of the premises and of the covenants and agreements aforesaid, bargain, sell, and convey unto the said Josephine Prewit the following described personal property now on the Napier place aforesaid and in his possession, viz: Ten mules, two horses, three horse colts, eight oxen, ten cows and ten calves, thirty head of stock hogs, fifteen plows, fifteen pairs of plantation gear, four plantation wagons, three bedsteads, three beds; and thirty-five thousand pounds of seed cotton now being ginned on the plantation of Dr. Stephenson, in the county of Lawrence aforesaid.

To have and to hold the property aforesaid, both real and personal, with its rents, profits, and issues, and all its incidents, to the sole and separate use and as the sole and separate estate of the said Josephine Prewit, without restraint, condition, or limitation except as now herein immediately stated, that is to say:

The said party of the first part hereby charges the debt aforesaid due

by him to Bradley, Wilson & Co. aforesaid, in a sum not to exceed fifthousand dollars, upon that portion of the real estate hereinbefore conveyed known and described as follows: The southeast quarter of the northwest ¼, the east ½ of the southwest ¼, the northwest ¼ of the southeast ¼, the southw. ¼ of the southeast ¼ of section seven, the west ½
62 of the southwest ¼ of section eight, the northwest ¼ of the northeast quarter of section eighteen, the east half of the northeast ¼ of section eighteen, the east half of the southeast ¼ of section eighteen, the southwest ¼ and the northwest quarter of the southwest ¼ of section nineteen, the northwest quarter and the northeast quarter of the northwest ¼ of section nineteen, all in township five, of range nine west, in the county of Lawrence aforesaid; and the east ½ of the northeast quarter of section twenty-four, in township five, of range ten west, lying in Franklin County, Alabama, containing in all eight hundred acres, and being part of the Napier place aforesaid; also four hundred and eighty acres of the Dearing place aforesaid, being that portion thereof which lies north of the Memphis and Charleston Railroad and west of Town Creek, its eastern boundary being the plantation of the estate of the late Isaac Winston, jr., its northern boundary being the plantation of Mrs. Eliza Madding, and its western boundary the plantation of William Hooks and Philemon King, all in the county of Lawrence aforesaid; and also the Gallagher tract, hereinbefore conveyed, being two hundred acres lying on Wolf Creek, in the county of Lawrence aforesaid, being the same purchased by the party of the first part of Clinton Gallagher, and bounded on the north by the lands of J. W. S. Donnell.

And the party of the first part, in pursuance of the reservation of the right aforesaid to charge the debt aforesaid due to Walker,
63 Brickell and Lewis upon the property hereinbefore conveyed and not specially charged with the payment of the debt aforesaid to Bradley, Wilson and Co., hereby charges the payment of said debt to Walker, Brickell and Lewis upon the lands hereinbefore described and conveyed and known as the Ashford place.

In witness of all and singular the recitals, agreements, stipulations, and covenants of the foregoing deed, the said party of the first part hereunto subscribes his name and affixes his seal at Huntsville, Alabama, this the 27th day of April, 1866.

RICHARD PREWIT. [SEAL.]

[Stamp, $40.]

STATE OF ALABAMA,
Madison County:

I, Robert D. Wilson, judge of the probate court of the county and State aforesaid, hereby certify that Richard Prewit, of the county of Lawrence, in said State, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date.

Given under my hand at Huntsville, Ala., this the 27th day of April, 1866.

R. D. WILSON,
Judge P. C.

THE STATE OF ALABAMA,
Lawrence County:

I, Josephine Prewit, wife of Richard Prewit, of said coun'ty and State,

do make, declare, and publish this instrument as & for my last will and testament:

First. I direct the payment of all my just debts.

Second. In the event of my dying without leaving children of my present marriage I give, devise, and bequeath unto D. M. Hodges, of said county and State, to hold in trust for my husband, the said Richard Prewit, all my estate, real and personal, of every kind and description, the said trustee to manage and direct, possess, and control the corpus of said property, & hold the same subject and in subordination to the trusts herein created, but to pay over to the said Richard Prewit, or apply as he may direct, the annual rents, issues, & profits of said property.

Third. In the event of my dying leaving a child or children living, then and in that event I give, devise, and bequeath unto the said D. M. Hodges, as trustee as aforesaid, a child's part of my estate, real and personal, of every kind and description, in trust for my husband, the said Richard Prewit, upon the same terms and conditions & with the same limitations as are particularly set forth and nominated in the second clause of this my will.

Fourth. I hereby nominate and appoint my husband, the said Richard Prewit, the executor of this my last will and testament, &
64 direct that he shall not be required to give bond as such executor.

In witness whereof I have hereunto subscribed my name & affixed my seal this the 16th day of July, 1866.

JOSEPHINE PREWIT. [SEAL.]

Signed, sealed, and published by Josephine Prewit as her last will and testament, in our presence, & signed by us as subscribing witnesses thereto, at her request, in her presence, & in the presence of each other, this the 16th day of July, 1866.

L. P. WALKER.

LEVI F. WARREN, Sr.

66 This indenture, made and entered into on this 20th day of November, in the year of our Lord 1865, between Richard Prewit of the first part, of the county of Lawrence, and State of Alabama, and James R. Bates, of the same county and State, of the second part, witnesseth:

That for and in consideration of the sum of twenty-five thousand nine hundred and eighty-two dollars, in hand paid at and before the sealing of these presents by the said party of the second part to the said party of the first part, and the receipt of which is hereby acknowledged, that the said party of the first part has granted, bargained, and sold, and by these presents do grant, bargain, and sell unto the said party of the second part the following tracts or parcels of land situated in the county of Lawrence, to wit: The E. ½ NE. ¼, S. 21, T. 5, R. 8 W.; the 16th S., T. 5, R. 8 W.; SW. ¼, S. 5; SE. ¼ of SE. ¼, S. 6, T. 5, R. 8 W., and the NW. ¼ of SE. ¼, S. 6, T. 5, R. 8 W.; the W. ½ NW. ¼, S. 20, T. 5, R. 8 W.; the SE. ¼ of NE. ¼, S. 19, T. 5, R. 8 W.; the NE. ¼ of NE. ¼ of S. 7; also N. ½ of SE. ¼, S. 7, & SE. ¼ NE. ¼, S. 7; the NE. ¼ of SE. ¼, S. 7; also NW. ¼ NW. ¼, S. 8, all in T. 5, R. 8 W; the NE. ¼, S. 19, T. 4, R. 8 W.; the W. ½ SW. ¼, S. 28, & E. ½ SW. ¼, S. 29, T. 5, R. 8 W.; the SW. ¼ NE. ¼, S. 20, T. 5, R. 8 W.; the S. ½ SW. ¼, S. 9, T. 5, R. 8 W.; the SE. ¼ SE. ¼, S. 9, T. 5, R. 8 W.; the SW. ¼, S. 7; NW. ¼, S. 18, T. 5, R. 8 W.; the SW. ¼ NE. ¼, S. 17, T. 5, R. 8 W.; the NW. ¼,

S. 4, T. 4, R. 8 W., & the SW. ¼, S. 4, T. 5, R. 8 W., and the NW. ¼, S. 9, T. 5, R. 8 W., & E. ½ SW. ¼, S. 9, T. 5, R. 8 W.; SW. ¼ NW. ¼, S. 10, T. 5, R. 8 W.; the NW. ¼, S. 22, T. 5, R. 8 W.; the NE. ¼ SE. ¼, S. 12, T. 6, R. 8 W.; the S. ½ of W. ½ of SW. ¼, S. 15, T. 5, R. 8 W.; the S. ½ E. ½ NE. ¼, S. 31, T. 4, R. 8 W.; the E. ½, SW. ¼, S. 27, T. 4, R. 8 W.; the NE. ¼, S. 12, T. 5, R. 9 W.; the SW. ¼ SE. ¼, S. 7, T. 5, R 8 W.; the NE. ¼, S. 32, T. 4, R. 8 W., except 3 acres in the
67 SW. corner of said quarter-section; one hundred and forty acres, known as the Ashford Washington land, lying south of the Memphis and Charleston Railroad, and the public road leading from Courtland to Tuscumbia, including the houses; also, sixty-five acres, joining the above-named on the east, and lying between the aforesaid road; also, eighty acres lying east of J. W. S. Donnell's plantation, & joining his land, and known as the Ashford land; also, one hundred and sixty acres, lying on Wolf Creek—Nos. not known; also, four forty-acre tracts, mountain land, lying in the neighborhood of Crooked Creek; also, my interest in the Green Hill and Bracken land—undivided, which is one-half lying on Crooked Creek, supposed to be eighty acres; and the S. W. ¼, S. 8, the S. ½ NW. ¼, S. 8, T. 5, R. 8 W.

To have and to hold the above conveyed tracts of land, with all the tenements and appurtenances thereunto belonging, or in any wise appertaining to the only use and behoof of said party of the second part; and the said party of the first part covenants to and with the said party of the second part, his heirs, executors, administrators the title of the above-conveyed land to warrant and forever defend.

In testimony of which, the said party of the first part has hereunto put his hand and affixed his seal on the day and year above mentioned.

RICHARD PREWIT. [SEAL.]

Teste:
HUGH C. LECKEY.
O. CHISHOLM.

68 SCHEDULE A.

Richard R. Prewit to James R. Bates, D'r.

For services rendered from 1st July, 1855, to July 1st, 1866, eleven years, at one thousand dollars per year:		
For services from 1st July, 1855, to July 1st, '56..	1,000	
Interest for 10 y'rs, to July 1st, 1866.....	800	
		1,800
For services from July 1st, 1856, to July 1st, 1857.	1,000	
Interest for 9 years, to July 1st, 1866.....	720	
		1,720
For services from July 1st, 1857, to July 1st, 1858.	1,000	
Interest for 8 years, to July 1st, 1866.....	640	
		1,640
For services from July 1st, 1858, to July 1st, 1859..	1,000	
Interest for 7 years, to July 1st, 1866.....	560	
		1,560
For services from July 1st, 1859, to July 1st, 1860.	1,000	
Interest for 6 years, to July 1st, 1866.....	480	
		1,480
For services from July 1st, 1860, to July 1st, 1861.	1,000	
Interest for 5 years, to July 1st, 1866.....	400	
		1,400

For services from July 1st, 1861, to July 1st, 1862.	1,000	
Interest for 4 years, to July 1st, 1866.....	320	
		1,320
For services from July 1st, 1862, to July 1st, 1863.	1,000	
Interest for 3 years, to July 1st, 1866.....	240	
		1,240
For services from July 1st, 1863, to July 1st, 1864.	1,000	
Interest for 2 years, to July 1st, 1866.....	100	
		1,100
For services from July 1st, 1864, to July 1, 1865...	1,000	
Interest for 1 year, to July 1st, 1866.....	80	
		1,080
For services from July 1st, 1865, to July 1st, 1867..	1,000	1,000
		$15,400

To services of Elijah Blacksmith, from 1st July, 1855, to Jan'y 1st, 1863, at $2.50 per year:

For services from 1st July, 1855, to July 1st, 1856.	250	
For services from 1st July, 1856, to 1st July, 1857.	250	
Interest for 5 years & 6 mo's, to Jan'y 1st, 1863....	110	
		610
69 For services from 1st July, 1857, to July 1st, 1858.....	250	
Interest 4 y'rs, 6 mo's, to Jan'y 1st, 1863.....	90	
		340
For services from 1st July, 1858, to 1st July, 1859.	250	
Interest 3 y'rs and 6 mo's, to Jan'y 1st, 1863.	70	
		320
For services from 1st July, 1859, to 1st July, 1860.	250	
Interest 2 y'rs & 6 mo's, to Jan'y 1st, 1863.....	50	
		300
For services from 1st July, 1860, to 1st July, 1861.	250	
Interest 1 y'r & 6 mo's, to Jan'y 1st, 1863.....	30	
		280
For services 1st July, 1867, to July 1st, 1862.....	250	
Int. on $250 for 6 mo's.....	10	260
		2,110
For 1 horse sold you July 1, '55.....	250	
Int. for 10 y'rs, to July 1st, 1866	220	
	470	470
Interest on two thousand one hundred and ten dollars from 1st Jan'y, 1863, proclamation of Lincoln, to July 1st, 1866, 3 y'rs & 6 mo's, this am't.....	590 80	590 80
		$18,560 80

(Signed) JAMES R. BATES.
RICHARD PREWIT.

70 This indenture, made and entered into this the 16th day of July, 1866, in the year of our Lord one thousand eight hundred and sixty-six, between Richard Prewit of the first part, of the county of

Lawrence, and State of Alabama, and James R. Bates, of same county and State aforesaid, of the second part, witnesseth:

That for and in consideration of the sum of eighteen thousand five hundred and sixty dollars and eighty cents, due by account this day stated, and which is herewith filed as part of this deed, marked schedule A, has granted, bargained, and sold, and by these presents do grant, bargain, and sell, to the party of the second part the following tracts or parcels of land situate and being in said county aforesaid, to wit: The 16th section, township 5, range 8 west, and the southwest quarter of sec. 21, and the northwest quarter of sec. 28, and the southeast quarter of sec. 21, and the northeast quarter of sec. 21, and the south half of the west half of the northwest quarter of sec. 15, and the half, being and undivided interest in the southwest quarter of sec. 20, all of which lies in township 5, range 8 west of the meridian base line of Huntsville; also the northeast ¼ of section eleven; also the following described lands, entered at government entry at 12½ cents per acre, (to wit): the west half of the southwest quarter of sec. 28, the east ½ of the southeast quarter of sec. 29, and the northwest quarter of sec. 27, and the
71 northeast quarter of sec. 28, and the west ½ of southwest quarter of sec. 22, and the northwest quarter of section 22, and the northwest quarter of section 21, and the south half of the northeast quarter of sec. 20, and the east half of southeast quarter of sec. 17, and the southwest quarter of the northeast quarter of sec. 17, and the north ½ of the northeast quarter sec. 8, and the northeast quarter of the southeast quarter of sec. 20, and the west half of the northwest quarter sec. 20, and the southeast ¼ of the northeast quarter of sec. 19, and the northeast quarter of sec. 7, and the northeast ¼ of the southeast quarter of sec. 7, and the northwest ¼ of the northwest quarter of sec. 8, and the south ½ of the northwest quarter of sec. 8, and the southwest quarter of sec. 5, and the southeast ¼ of the southeast quarter of sec. 6, and the northwest ¼ of the northeast quarter of sec. 6, and the northwest quarter of sec. 18, and the southwest quarter of sec. 7, all in township 5, range 8 west; also the northeast quarter of southeast quarter, sec. 12, township 6, range 8 west; to have and to hold the above conveyed lands with all tenements and appurtenances thereunto belonging or in anywise appertaining, to the only proper use and behoof of the said party of the second part, his heirs and assigns forever. And the said party of the first part for himself, his heirs, executors, and administrators the *the* title of the above described lands to warrant and forever defend.

72 In testimony whereof the said party of the first part has hereunto put his hand and affixed his seal, this day and year above written.

RICHARD PREWIT. [SEAL.]

Attest:
OSWALD KING.
ROB'T KING, Jr.

STATE OF ALABAMA,
Lawrence County:

I, John Phelan, register in chancery for the third district of the northern division of Alabama, and of the chancery court of said district, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and of record in my office viz:

1. The agreement of submission for decree by the parties in the cause

of John A. Lile, administrator of Thomas Lile, against Richard Prewit & wife, Josephine Prewit, Joseph C. Bradley, Hugh Wilson, and Wilson C. Bibb, partners under the firm-name and style of Bradley, Wilson & Co., and Leroy P. Walker, Robert C. Brickell, and David P. Lewis, partners under the firm-name and style of Walker, Brickell & Lewis.

2. The exceptions of the defendant Josephine Prewit to the testimony offered by the complainant.

3. The answer of the defendant Josephine Prewit in said cause.

4. Copy of the deed of marriage settlement referred to in said answer as Exhibit M to the answer of the defendant Richard Prewit in said cause.

73 5. Copy of will exhibited with deposition of defendant Josephine Prewit, taken for and offered by the defendants as evidence in said cause.

6. The original deed of conveyance from the defendant Richard Prewit to James R. Bates of date of November 20, 1865, exhibited with the deposition of said Richard Prewit, taken for and offered by the defendants as evidence in said cause.

7. Schedule A, exhibited with said deposition of said Richard Prewit.

8. Copy of deed of conveyance executed by said defendant Richard Prewit to J. R. Bates in July, 1866, offered as evidence by the complainant in said cause.

In testimony whereof I hereunto set my hand and affix my seal of office, at Courtland, in said third district of the northern chancery division of the State of Alabama, this the 2nd day of December, A. D. 1873.

[SEAL.] JOHN PHELAN,
Register.

74 *Opinion of court.*

United States circuit court, northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit,
vs.
RICHARD PREWIT AND JOSEPHINE PREWIT et als.

The attack on the marriage settlement is made by the assignee in bankruptcy of Richard Prewit, representing his creditors, and the charge is that the settlement was made by Richard Prewit and accepted by Josephine Prewit, with the purpose to hinder, delay, and defraud the creditors of the former; and is therefore null and void; the bill prays that the deed may be so declared and the property described therein turned over to the assignee and by him administered as assets of the bankrupt estate.

The principals of law which apply to a case like this are well settled. Nothing can be clearer, both upon principle and authority, than the doctrine that to make an antenuptial settlement void as a fraud upon creditors is necessary that both parties should concur in or have cognizance of the intended fraud; if the set'ler alone intended fraud and the other party have no notice of it, but is innocent of it, she is not and cannot be affected by it. Marriage in contemplation of law is not only a valuable consideration to support a settlement, but is a consideration

of the highest value, and from motives of the soundest policy is upheld with a steady resolution; the husband and wife parties to such a contract are therefore deemed in the highest sense purchasers for a valuable consideration, and so that it is bona fide and without notice of fraud brought home to both sides it becomes unimpeachable by creditors.

Fraud may be imputible to the parties either by direct co-operation in the original design at the time of its concoction or by constructive co-operation from notice of it, and by carrying the design after such notice into execution. (Maguire vs. Thompson et als., 7 Pet., 393, 394; see also 1 Bishop, on married women, sec. 775; Co., Litt. 9, 16; Schouler Dom. Rel., 263; Ford vs. Stewart, 15 Beav., 499; Narvin vs. Prouse, 6 Vesey, jr., 752; Peachey Mar. Sett's, 56; Armfield vs. Armfield, 1 Freeman's Chy. R., 311; Story vs. Ardon, 1 John Ch., 271; Same vs. Same, 12 John, 536; Johnson vs. Dillard, 1 Bay, 232, 234; Huston vs. Cantrill, 11 Leigh, 154; Turner vs. Trezervant, 2 Dissans, 264; Wheelan vs. Wheelan, 3 Crow, 538.)

In Codogen vs. Kennett (2 Cowper, 434), which was an action of trover brought by the plaintiffs' trustees under the marriage settlement of Lord Montford against the defendant, who was a judgment creditor of Lord Montfort's, and the sheriff's officers to recover certain goods taken by them on execution, Lord Mansfield said: "If the transaction be not bona fide, the circumstance of its being bona fide for a valuable consideration will not alone take it out of the statute. I have known several cases where persons have given a full and fair price for goods and where the possession was actually changed, it being bona fide for the purpose of defeating creditors, the transaction has been held fraudulent and void. * * * The question in every case is whether the act done is a bona fide transaction or whether it is a trick or contrivance to defeat creditors."

"A man who is indebted may on his marriage *may* make a settlement of his property, provided the settlement is made honestly and in good faith, and the wife's knowledge of his indebtedness will not alone render it void. It is, however, clearly established that marriage cannot be made the means of committing fraud if there is intent to delay, hinder, or defraud creditors, and to make the celebration of a marriage part of a scheme to protect property against the rights of creditors, the consideration of marriage cannot support the settlement. (Bump on Fraudulent Conveyance, 308, citing Bulmer vs. Hunter, L. R., 8 E. G., 46; ex parte M'Barnie, 1 B. M. & G., 441; Bates vs. Union Bank, H. & G., 175; Champern vs. Cotton, 17 Ves., jr., 264; Richardson vs. Horton, 7 Beav., 112; Colombine vs. Penhall, 1 Suv. & G. & F., 228; ex parte Mayor, Mont., 292.)

Notice of the fraud may be inferred from the facts and circumstances of the settlement. (Columbine vs. Penhall & Bulmer vs. Hunter, *supra*.)

If the amount of property settled is extravigant or grossly out of proportion to the status and circumstances of the husband, this of itself is sufficient notice of fraud. (Ex parte McVeline, supra; Croft vs. Arthur, 3 Dissan, 223.)

In an able opinion in the case of Simpson vs. Graves, reported in Riley's Equity Cases, 232, Justice Knott, of South Carolina, says: "There is no case that I have seen where a man has been permitted to make an intended wife a mere stock to graft his property upon in order to place it beyond the reach of his creditors; a marriage settlement must be construed like every other instrument; the question may always be raised whether it was made with good faith or intended as an instrument of fraud; even though marriage may be a part of the consideration, fraud

may be mingled with it, and that may as well be inferred from internal evidence as from circumstances alinned.

Marriage is put on the footing of a pecuniary consideration, and it is said if a person sell his property for a full consideration and squander the money his creditors have no redress, from which it is inferred that marriage will afford the same protection, but in the case of a bona fide sale the seller has parted with his property, the purchaser has parted with his money, and the law will presume that the object was the payment of his debts, but the purchaser is not answerable for the misapplication of the money. It is not so with a marriage settlement; the seller does not in fact part with his property; it is still intended for his own enjoyment; neither does he receive in return anything that will satisfy his creditors; his wife will not be received in payment of his debts; it is not to be understood that because marriage is equivalent to a pecuniary consideration it is to be considered in the nature of an actual purchase. A settlement is not intended as the price of the wife, but as a provision for a family; it must therefore be reasonable and with a due regard to the rights of others; a creditor has an equitable claim to the property of the debter.

Applying these rules of law to the facts of this case, it is to be determined whether the purpose of Richard Prewit in making the conveyance to the woman whom he proposed to mar'y was to hinder, delay, or defraud his creditors, and if it was, whether Josephine Prewit had notice of such purpose before the marriage.

As to the first question, the evidence leaves no dou't in my mind touching the fraudulent intent of Richard Prewit. To accertain the intent of the set'ler was one authorized to consider fraudulent transfer to other persons at or about the time of the transfer considered. (Bump on Fraudulent Conveyances, 545, and numerous authorities therein cited.)

The evidence shows that Prewit had been insolvent ever since the close of the late war, that he was largely insolvant on November 20th, 1865, when he made a conveyance to his son-in-law, Bates, of 4,400 acres of land;
76 the consideration named in the deed was $25,982.00 in money. Prewit testifies that this was not the real consideration, but that it was the discharge of his debt to Bates and the payment by Bates of the residue in money. He further says that at the date of this deed no formal account was stated between him and Bates, but the debt was supposed to be $17,000 or $18,000 *dollars*, but that afterwards, in July, 1866, the account was stated, which showed that there was due from Prewit to Bates the sum of $18,560.80 cents. The account is in evidence, and it bears upon its face the ear-marks of a trumped up account. There is not a word of evidence to show that any contract had ever been made by Bates for his own slave or for the hire of his slave or for the sale of his horse, that any not e had ever been given or any account kept. In fact, Prewit says the account was never stated till eight months after the date of the deed of November 20, 1865. It is a remarkable fact, too, that for a period of eleven years this account should be allowed to run without a single credit or payment. That such an account could be bona fide seems incredi*ta*ble, and yet upon such an account, at that time uncertain in amount, and without the payment of a cent of money, and without taking from him any evidence of debt, Pruit conveys land to Bates which he estimated to be worth $26,000 *dollars*. If this were the deed assailed no court would have any hesitation in pronouncing it fraudulent. We find, then, that in November, 1865, Prewit being hopelessly insolvant is attempting to cover up a large part of his property by fraudulent deed to his son-in-law.

For some reason the devise was abandoned and the deed returned to Prewit, but there was no reconveyance of the land to him, and in the following April Prewit executed the marriage settlement.

He owed his creditors $90,000 *dollars;* his available means amounted to little over $50,000 *dollars.* Of this property he devoted $13,300 *dollars* to the payment of two favored creditors. He retained lands worth about $7,000 *dollars,* which must have been under the cloud of the deed of November, 1865, which was never cancelled, and which he afterwards conveyed to his son-in-law, Bates, in payment of the account heretofore referred to, and he conveyed to his intended wife all the residue of his property, worth, according to the acquired facts, $32,776 *dollars,* leaving about $70,000 *dollars* of debts unprovided for.

The mear statement of these facts reveals the purpose of Prewit. He commenced his attempts to defeat his creditors by a fraudulent deed in November, and he closes by a deed by which he in effect secures to himself the enjoyment of more than three-fifths of his property by a conveyance to his intended wife, and leaves creditors to the amount of seventy thousand dollars entirely unprovided for. The effect of this deed was to hinder, delay, and defraud his creditors, who were not mentioned in the marriage settlement, for it conveyed all the property which he had not before conveyed, and left such creditors nothing. Prewit must be held to know what he was about, and to intend the natural consequences of his acts. The pretense that he was insolvent in April, 1866, but did not know it, is absurd. He owed $90,000 *dollars,* which was bearing interest, and he had but $50,000 *dollars* of property to pay it with. The disposition of $33,000 *dollars* of this property, all that he had not conveyed by a former deed in such a way as to place it beyond the reach of his creditors, while at the same time he received no pecuniary equivalent which he could apply to his debts, shows clearly his purpose to defraud his creditors. We find, then, that Prewit was, at the date of the settlement, embarrassed and largely insolvent. The property settled on his proposed wife was out of all reasonable proportion to his means. Even if he had owed no debts, the property settled was equitably the property of his creditors. The deed of settlemen conveyed substantially all his property not conveyed by a previous conveyance which was still in force, and it left creditors to the amount of $70,000 *dollars* entirely unprovided for. When in December, 1868, Prewit filed his schedules in bankruptcy, the reported his wearing
74 apparel, valued at fifty dollars, as his only assetts. The fraud upon his creditors designed a'd consum'ated by Prewit was gross and palpable.

But fraud brought home to the settler is not of itself sufficient to avoid the settlement. The grantee must participate in the fraud, or at least must have cognizance of it. It is therefore to be inquired whether Josephine Prewit had, before her marriage with Richard Prewit, notice of the fraud which Prewit contemplated, and which he carried into execution by means of the marriage settlement.

We know from her own answer that before the execution of the marriage settlement she was advised that Prewit was indebted, and that he was embarrassed, and it was, as she says, on account of his indebtedness and embarrassments that she demanded a marriage settlement before she would consent to marry him.

Why did she make this demand? Clearly because she feared that the creditors of Prewit might sna'ch away his property and leave her destitute.

With this knowledge Prewit presents to her a conveyance which

transferred to her property worth $32,776 *dollars*, could she bona fide, knowing that Prewit was indebted and embarrassed, accept a conveyance for so large a sum? Could she shut her eyes and say she did not know the extent of his debts, did not know of his fraudulent purpose, and therefore she received the deed in good faith?

Actual knowledge of the fraudulent intent is not necessary; a knowledge of facts sufficient to excite the suspicions of a prudent man or woman, and to put him or her on inquiry amount to notice, and are equivalent to actual knowledge in contemplation of law. (Atwood vs. Johnson, 56 Egreen, 150; Green vs. Tantum, 6 C. E. Grem., 364; Jackson vs. Martin, 7 Cow., 301; Smith vs. Harvey, 2 Bailey, 118; Mills vs. Hewit, 19 Texes, 257.)

It has even been held that the means of knowledge by the use of ordinary diligence amounts to notice. (Farmers' Bank vs. Douglass, 11 S. & M., 469.) But in this case it is not necessary to go so far in the indebtedness and pecuniary embarrassment of Prewit; and the large estate conveyed by the deed of settlement put Josephine Prewit on inquiry, and she is charg'able with knowledge of every fact which she could have learned on inquiry. She might have learned that all the evidence in this case discloses about the amount of Prewit's debts and property, and such knowledge would have made clear Prewits fraudulent purpose. She is therefore charg'able with notice of the fraud, and her acceptance of the deed of settlement after said notice makes her a party to the fraud, and renders the marriage settlement null and void.

The creditors of Prewit, whose bona fide debts were provided for by the marriage settlement, can take no benefit from the fraudulent instrument. When a deed in favor of the persons is obtained by the fraud of one, although without the privity of the other the deed will be void as to both. (Wheelen vs. Wheelen, 3 Conn., 537, 2 Div., Ch. 393; Hugninn vs. Beasley, 14 Ves., 273; Townsen & Brothers vs. Harwell, 18 Ala., 301.)

Although they had no notice or knowledge of the fraud contemplated by Prewit, yet the fact that the grantee under whom their rights are claimed not only had notice of the fraud, but was a beneficiary under the fraudulent deed, avoids the instrument as to them as well as to the grantee.

The result of these views is that the marriage settlement made by said Richard upon Josephine Prewit must be declared void for all purposes and the property conveyed thereby turned over to the assignee in bankruptcy for administration.

W. B. WOODS,
Circuit Judge.

78 In the district court of the United States for the northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE PREWIT, and Reuben Chapman.

This cause having been he'rd on the pleadings and proof, and the same having been argued by the solicitors for the respective parties, it is ordered, adjudged, and decreed that the deed of conveyance from the

defendant Richard Prewit to the defendant Josephine Prewit, of date April 27th, 1866, described in the bill of complaint, be, and the same hereby is, set aside; that the complainant, Robert H. Wilson, as assignee in bankruptcy of the estate of said Richard Prewit, bankrupt, be, and hereby is, invested with all the right, title, and estate, both in law and in equity, in and to the property described in said deed of conveyance, viz, the following described tracts of land, viz: The southwest quarter of section nineteen, township four, range nine west; the west half of section thirty, in township four, range nine west, situated in the county of Lawrence, State of Alabama. Also the southeast quarter and the northeast quarter of section twenty-four, in township four, range ten west; the east half of section twenty-five and the east half of section thirty-six, in the same township and range, situated in the county of Franklin, State of Alabama. All of the above lands contain by government survey fourteen hundred and twenty-five acres, being the plantation on which the late John L. Towns resided at the time of his death, and known as the Towns place, except the said northeast quarter of section twenty-four aforesaid, which was purchased by said Richard Prewit of R. C. Leigh; also one hundred and sixty acres of land purchased by said Richard Prewit of W. Downs, lying on the county line road between the counties of Franklin and Lawrence, in said State and in said county of Lawrence, being south of the Towns place aforesaid, and adjoining the same; also the south half of the southwest quarter of section thirty-one, in township four of range nine west, and the north half of the northwest quarter of section six, in township five of range nine west, situated in the county of Lawrence aforesaid, being the same conveyed by deed of John Dial & wife to said Richard Prewit, of date January 14, 1857; also the southeast quarter of section nineteen, the northeast quarter and southeast quarter of section thirty, the southeast quarter and the southwest quarter and the northwest quarter of section twenty-nine; also forty acres off the south side of the southwest quarter of section twenty, running across the entire width of said quarter section; the west half of the northeast quarter of section thirty-one, all in township four, range nine west. Also the southeast quarter of the northwest quarter, the east half of the southwest quarter, the northwest quarter of the southeast quarter, the east half of the southeast quarter of section seven, the west half of the southwest quarter of section eight, the northwest quarter of the northeast quarter of section eighteen, the east half of the southeast quarter of section eighteen, the southwest quarter of the northwest quarter and the northwest quarter of the southwest quarter of section nineteen, the northwest quarter and the northeast quarter of the northwest quarter of section nineteen, all lying in township five, of range nine west, and in the county of Lawrence aforesaid, and the east half of the northeast quarter of section twenty-four, in township five, of range ten west, lying in the county of Franklin, in the State of Alabama, containing in all eighteen hundred and eighty acres, being the same conveyed to said Richard Prewit by deed of John S. Napier, as trustee for Mary C. Napier, and Mary C. Napier, of date January 7, 1857. Also seven hundred and sixty acres, known as the Dearing place, situated in the county of Lawrence aforesaid, four hundred and eighty acres of which lie north of the Memphis & Charleston
79 Railroad and west of Town Creek, its eastern boundary, being the plantation of the estate of the late Isaac Winston, jr., its northern boundary being the plantation of Mrs. Eliza M. Madding, and its western boundary the plantation of William Hooks and Philmon King, and two hundred and eighty acres of which lie south of said railroad

and between said railroad and the wagon road, Town Creek being its western boundary and the Ashford place its eastern boundary; also two hundred acres lying on Wolf Creek, in said county of Lawrence, known as the Galagher place, being the same purchased by said Richard Prewit of Clinton Galagher, and bounded on the north by the lands of I. W. S. Donnell; also seven hundred and five acres situated in said county of Lawrence, being a portion of what is known as the Ashford place, all of which lies south of the Memphis & Charleston Railroad, and four hundred and sixty-five acres of which lies between said railroad and the wagon road on the east side of Town Creek, bounded on the west by said Dearing place and on the east by the Bracken place, and two hundred and forty acres of which, being timbered land, is bounded on the north and east by the lands of I. M. S. Donnell and on the west by the lands of John Brooks—the Ashford lands aforesaid being a part of the lands conveyed to said Richard Prewit by Thomas Ashford & wife. Also what is known as the Bracken place, in the county of Lawrence aforesaid, being the southeast quarter of section nineteen, in township four, of range eight west, lying east of the Ashford place aforesaid, and north of the wagon road aforesaid, and adjoining the town of Jonesboro, in said county of Lawrence. Also what is known as the Sanders tract, situated in said county of Lawrence, being the northeast quarter of section thirty-two and the south half of the northwest quarter of section thirty-two, in township four, range eight west; also forty acres purchased by said Richard Prewit of one M'Intosh, situated in the county of Lawrence aforesaid, adjoining said Sanders tract and said Ashford tract and the lands of John Brooks; also the undivided half of the west half of the southwest quarter of section twenty-nine, in township four, range eight west, in said county of Lawrence, of which John T. Abernathy was the owner of the other half; also one thousand acres situated in said county of Lawrence, being the lands purchased by said Richard Prewit of Mr. John Mays, lying at the foot of the mountain, and bounded by the mountain on one side and by the lands of William M'Gehee on the other; and also the following personal property on said Napier place aforesaid, viz, ten mules, two horses, three horse colts, eight oxen, ten cows and ten calves, thirty head of stock hogs, fifteen plows and fifteen pairs of plantation gear, four plantation wagons, three bedsteads, three beds, and thirty-five thousand pounds of seed cotton.

But this decree is not intended to prejudice the right of said Richard Prewit and his wife, Josephine Prewit, or either of them, to the homestead allowed by law in said land, or the right of either of them to hold free from execution for debts any part of said personal property.

It is further ordered, adjudged, and decreed that said Richard Prewit and said Josephine Prewit surrender and deliver possession of all of said property to the complainant, Robert H. Wilson, as assignee in bankruptcy of the estate of Richard Prewit, bankrupt, within thirty days, to be by him administered as assets of said estate in bankruptcy; and in default of such surrender and delivery of possession of said property, and upon the demand of said complainant, the clerk of this court shall issue a writ to the marshal of this district commanding him to place said complainant in possession of said property.

It is further ordered, adjudged, and decreed that the defendant Josephine Prewit pay the costs of this suit, for which let execution issue.

April 15, 1878.

W. B. WOODS, *Judge.*

(Endorsed:) Final decree. Filed and entered this the 15th day of April 1878. A. W. M'Cullough, clerk C. C.

80 *Order of court.*

And afterwards, to wit, on the 15th day of April, A. D. 1878, an order was made in said cause in the words and figures following, to wit:

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT AND HIS WIFE, JOSEPHINE Prewit, and Reuben Chapman.

Now comes the defendants, Richard Prewit and his wife, Josephine Prewit, by their solicitors, and prays for the allowance of an appeal from the decree rendered by the court in this cause:

Whereupon, after due consideration thereof, it is ordered by the court that the appeal prayed for in this cause by the said defendants Richard Prewit and his wife Josephine Prewit be allowed.

81 In the circuit court of the United States for the northern district of Alabama.

ROBERT H. WILSON, ASSIGNEE OF RICHARD Prewit, bankrupt,
vs.
RICHARD PREWIT & WIFE, JOSEPHINE Prewit, and Reuben Chapman.

It is hereby agreed between the parties that the defendants who have appealed in this cause shall have sixty days in which to execute the appeal bond, and that said bond shall be in the sum of ten thousand dollars.

April 22, 1878.

CABANESS & WARD,
Sol's for Compl'ts.

82 THE UNITED STATES OF AMERICA,
Northern District of Alabama:

In the circuit court of the United States for the northern district.

Know all men by these presents that we, Richard Prewit, Josephine Prewit, Daniel M. Hodges, jr., and T. B. Hazlewood, are held and firmly bound unto Robert H. Wilson, as assignee in bankruptcy of the said Richard Prewit, in the full and just sum of ten thousand dollars, to be paid to said Robert H. Wilson, as such assignee in bankruptcy, his certain attorney, executors, administrators, or assignees; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this 22nd day of April, A. D. 1878.

Whereas lately, at a term of said circuit court of the United States for the northern district of Alabama, begun on the first Monday of April, 1878, and held in said city of Huntsville, in a suit depending in said court, between the said Robert H. Wilson, as such assignee in bankruptcy, as complainant, and the said Richard Prewit and Josephine Prewit, as defendants, a decree was rendered in favor of said complainant against said defendants; and the said Richard Prewit and Jose-

phine Prewit having prayed for and obtained an appeal to the Supreme Court of the United States, and filed a copy thereof in the said circuit court aforesaid, to reverse the decree in the aforesaid suit, and a citation directed to the said Robert H. Wilson, as such assignee, citing and admonishing to be and appear at a Supreme Court of the United States to be holden at Washington the first Monday of October next:

Now, the condition of the above obligation is such that if the said Richard Prewit and Josephine Prewit shall prosecute their said appeal to effect, and answer all damages and costs if they fail to make their said appeal good, then the above obligation to be void, else to remain in full force and virtue.

RICHARD PREWIT. [SEAL.]
JOSEPHINE PREWIT. [SEAL.]
D. M. HODGES, JR. [SEAL.]
T. B. HAZLEWOOD. [SEAL.]

I have examined the above signatures, know them to be genuine, and believe the parties amply sufficient for a bond of $10,000.

J. W. McDONALD,
Judge P. C.

The above & foregoing bond is hereby approved, May 15, 1878.

JOHN BRUCE, *Judge.*

(Endorsed:) Filed in clerk's office this 17th day of May, 1878. A. W. McCullough, clerk.

83 Circuit court of the United States, northern district of Alabama.
In equity.

I, A. W. McCullough, clerk of said circuit court, do hereby certify that the foregoing pages, numbered from one (1) to (82) eighty-two, inclusive, contain a true, full, and complete transcript of the record and proceedings had in said court in the cause of Robert H. Wilson, assignee in bankruptcy of Richard Prewit, against Richard Prewit & wife, Josephine Prewit, and Reuben Chapman, in equity, as fully as the same remains on file and of record in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at office in the city of Huntsville, in said district, this the 10th day of April, in the year of our Lord one thousand eight hundred and seventy nine, and of the Independence of the United States the one hundred and third year.

[SEAL.] AUGUSTUS W. McCULLOUGH,
Clerk U. S. Circuit Court, Northern District of Ala.

84 Supreme Court of the United States, October term, 1879.

RICHARD PREWIT & WIFE, JOSEPHINE PREWIT, appellants,
vs.
ROBERT H. WILSON, ASSIGNEE OF RICHARD PREWIT, bankrupt, appellee.

It is admitted by the parties to this cause that the following proofs of debt, certified under the seal of the district court of the United States for the northern district of Alabama, were read in evidence on the hearing of the cause in the circuit court below. And it is agreed by and be-

tween the parties that the transcript of the record for appeal shall be amended by the insertion of said proofs of debt.

June 5, '80.

L. P. WALKER,
For Appellants.
F. P. WARD,
For Appellee.

In the district court of the United States for the northern district of Alabama. In bankruptcy.

In the matter of Richard Prewit, bankrupt.

NORTHERN DISTRICT OF ALABAMA, *ss:*

85 At Courtland, in the county of Lawrence, and State of Alabama, on the 27th day of January, A. D. 1869, before me, Thomas Fullerton, register, &c., came Isaac N. Owen, of Moulton, in the county of Lawrence, and State of Alabama, and made oath, and who, after being duly sworn and examined at the time and place aforesaid, upon his oath says, that the said Richard Prewit, the person by whom a petition for adjudication of bankruptcy has been filed, at and before the filing of said petition, and still is, justly and truly indebted to this deponent in the sum of thirty-six hundred and ninety-nine dollars twenty-six cents, for and in consideration of purchase money of slaves. Said debt is evidenced by sealed promis'ory note made by bankrupt and T. I. McDaniel, dec'd, payable to deponent as adm'r of Permelia Holland, deceased, and deponent has made final settlement of his said administration, upon which he accounted for the value of said note, and the same became his individual property (a copy of said note is hereto attached); for which

86 sum of thirty-six hundred and ninety-nine dollars and twenty-six cents, or any part thereof, this deponent says that he has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, had or received any manner of satisfaction or security whatever.

And this deponent further says that the said claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person in the proceedings under said act has been, is, or shall be in any way effected, influenced, or controlled.

ISAAC N. OWEN.

Subscribed and sworn to this 27th day of Jan'y, A. D. 1869, before me.

THOS. C. FULLERTON,
Register.

87 (Copy.)

$3,420.00

Twelve months after date we promise *promise* to pay Isaac N. Owen, adm'r of Permelia Holland, dec'd, thirty-four hundred & twenty dollars, for value received. Witness our hands and seals.

Dec. 22nd, 1854.

(Signed) RICHARD PREWIT. [SEAL.]
T. I. McDANIEL. [SEAL.]

Upon which are the following endorsements of credits:

Received four hundred & twenty dollars of the within note 22 Dec'r, 1857.

Received two hundred & fifty dollars 21st Sept., 1858.

Received one thousand dollars of the within note, 22 March, 1859.

In the district court of the United States for the northern district of Alabama. In bankruptcy.

In the matter of Richard Prewit, bankrupt.

NORTHERN DISTRICT OF ALABAMA, *ss:*

At Huntsville, in the county of Madison and State of Alabama, on the 5th day of September, A. D. 1870, before me came Frank Neal, of said place, county, and State, and makes oath and says that the said
88 Richard Prewit, by whom a petition for adjudication in bankruptcy has been filed, is justly indebted to him in the sum of eight thousand dollars, with interest from January 15, 1865, due by a promis'ory note, of which the following is a copy, viz.

$8,000 *doll's.*

One day after date, we or either of us, promise to pay O. H. Bynum, or order, eight thousand dollars in money or par funds, for value received.

Courtland, January 14, 1865.

RICHARD PREWIT.
J. R. BATES.

That said note is stamped with internal-revenue stamps to the amount of four dollars, affixed and cancelled by Ephraim Latham, collector of this district, September 2, 1870, and truly endorsed as follows, viz:

Internal-revenue stamps to the amount of $4 affixed to this instrument, and cancelled by me at the request of Frank Neal, this 2nd day of September, 1870. Penalty, $50, collected.

EPHRAIM LATHAM, *Collector.*

That said Richard Prewit is also indebted to him in the further sum of two thousand and forty-seven dollars and fifteen cents, with interest from the 22nd day of March, 1859, due by a bond, of which the following is a copy, viz:

$3,420.

Twelve months after date, we promise to pay Isaac N. Owen,
89 adm'r of Permelia Holland, dec'd, thirty-four hundred & twenty dollars, for value received. Witness our hands & seals.

Dec'r 22, 1856.

RICHARD PREWIT. [SEAL.]
T. I. McDANIEL. [SEAL.]

Indorsed as follows, viz:

Received four hundred & twenty dollars of the within note, 22 Dec., 1857.

Received two hundred & fifty dollars, 21 Sept., 1858.

Received one thousand dollars of the within note, 22 March, 1859.

For value received, I transfer within note to Frank Neal, without recourse on me in law or equity.

June 13th, 1870.

ISAAC N. OWEN.

That this deponent is informed and believes that said promis'ory note for eight thousand dollars was given at its date in settlement of prior indebtedness of said Richard Prewit to said O. H. Bynum; that said bond for thirty-four hundred & twenty dollars was given at its date for purchase-money of slaves; that within this deponent's knowledge or belief no securities are held for the payment of said note or bond, nor any payments, except those endorsed on said bond, as hereinbefore stated, made on either of them; that the said sums claimed are
90 justly due from said Richard Prewit to this deponent; that this deponent has not, nor has any other person for his use, received any security or satisfaction whatever; that neither of said claims were procured for the purpose of influencing the proceedings under the act of the Congress of the United States, approved March 2, 1867, and that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of either of the said claims, or any part thereof, against said Richard Prewit, or *or* take or receive directly or indirectly any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent, or any other person in the proceedings under said act, is or shall be in any way affected, influenced, or controlled.

FRANK NEAL,
Deposing Creditor.

Subscribed and sworn to before me, and the note and bond copied in the deposition exhibited in proof, this 5th day of Sept., 1870.

THOS. C. FULLERTON,
Reg. in Bank.

Filed Sept. 5th, 1870.

LIONEL W. DAY, *Clk D. C.*

91 District court of the United States for the northern district of Alabama.

I, A. W. McCullough, clerk of said court, hereby certify that the foregoin' seven pages hereto attached contains a full, true, and perfect copy of the proofs of debt against the bankrupt estate of Richard Prewit, bankrupt, referred to in the foregoing, of agreement of parties in the cause of Richard Prewit & wife, Josephine Prewit, appellants, against Robert H. Wilson, assignee of the estate of Richard Prewit, bankrupt, appellee, pending in the Supreme Court of the United States.

Given under my hand and seal of said district court this June 17, 1880.

[SEAL.] A. W. McCULLOUGH,
Clerk U. S. Dist. Court.

(Indorsed:) Sup. Court U. S. 1880. Oct. term. No. 320. Prewit et al., app'ts, vs. Wilson, assignee of Prewit. Stipulation of counsel and addition to record. Filed 21st June, 1880.

(Indorsement on cover:) No. 320. Richard Prewit & Josephine Prewit, appellants, vs. Robert H. Wilson, assignee in bankruptcy of Rich'd Prewitt. N. Alabama C. C. U. S. Filed 28th October, 1878.

OFFICE SUPREME COURT U. S.
FILED
DEC 11 1880
JAMES H. McKENNEY, Clerk.

Supreme Court of the United States.

No. 320.

RICHARD PREWITT and JOSEPHINE PREWITT
APPELLANTS.

—*vs.*—

ROBERT H. WILSON.
Assignee of Richard Prewitt, Bankrupt, APPELLEE.

BRIEF OF L. P. WALKER AND JOHN C. MORGAN FOR APPELLANTS.

Supreme Court of the United States:

No. 320.

RICHARD PREWITT and JOSEPHINE PREWITT
APPELLANTS.

—*vs.*—

ROBERT H. WILSON.
Assignee of Richard Prewitt, Bankrupt, APPELLEE.

BRIEF OF L. P. WALKER AND JOHN C. MORGAN FOR APPELLANTS.

FACTS OF THE CASE.

About the 1st of April, 1866, Josephine Prewitt, a widow, twenty years of age, without children, residing in Tuscaloosa County, Ala., promised to marry Richard Prewitt, a citizen of Lawrence County, Ala., who was then fifty-seven years of age, on condition that he would make, by deed to be executed by him and approved by her, a settlement upon her of a large amount of real estate and some personal property, which settlement, the said Richard Prewitt then agreed to make. In pursuance of this agreement, Richard Prewitt, on the 27th of April, 1866, had prepared and signed, and on the same day duly acknowledged before the Probate Judge of Madison County, Ala., a deed of Marriage Settlement, whereby he conveyed to said Josephine Prewitt several tracts of land, containing in all 6,770 acres, and some personal property, of the value of $2,776.

Of the 6,770 acres of land so conveyed, 1480 acres were, by said Deed, charged with a debt of Richard Prewitt to Bradley, Wilson & Co., to the amount of $15,000, and 705 acres were charged with a debt of Richard Prewitt to Walker, Brickell & Lewis, which debt is shown by proof to have been $3,000—making the total quantity of lands thus charged with debts, 2,185 acres, and the aggregate indebtedness charged upon them, $18,000, and leaving 4585 acres conveyed to Mrs. Prewitt unencumbered by any charge.

The marriage took place on the 6th of May, 1866. Before the marriage, either on the same day or the day before, the Deed was delivered by Richard Prewitt to Josephine Prewitt, who approved it and accepted it as a fulfillment of his promise to make a marriage settlement upon her.

When the agreement to marry was made, and when the Deed of Settlement was executed, Richard Prewitt owned, besides the lands embraced in the Deed, 4700 acres, worth two dollars per acre, and about $700 of personal property, making in all, of property then owned by him, exclusive of that embraced in the Deed, $10,800. (See agreement of counsel.) When the deed was executed, Richard Prewitt

owed, besides, the debts secured by the Deed, other debts, amounting to about $60,000.

Mrs. Prewitt states in her answer, that when she contracted to marry Richard Prewitt, and when the Deed was executed, she knew that he was embarrassed and indebted, but to what extent, or to whom, she did not know; and she further states that it was because of her knowledge of the fact that he was so embarrassed, that she insisted upon his making a settlement upon her, as a condition precedent to marriage. This is the only evidence showing any knowledge on her part of the fact, or extent of his indebtedness. It is clearly proved by her deposition that except upon the condition of his promising to make the settlement upon her, she would not have promised to marry him, and that she would not have married him if he had failed or refused to make the settlement, as promised. There is no evidence showing that Mrs. Prewitt had any knowledge of the extent of the property owned by Richard Prewitt, except what she could derive from the Deed of Marriage Settlement, and she could not tell from that what proportion the property embraced by it, bore to the entire estate owned by him.

As already stated, the entire number of acres embraced in the Deed was 6,770—of which, 2,185 acres were charged with debts amounting to $18,000. *This was more than the value of the lands so charged.*

In as much as the 2,185 acres so charged were made by the Deed subject to an encumbrance exceeding their value, the settlement upon Mrs. Prewitt was, in substance and effect, a settlement upon her of the remaining 4,585 acres of land, and the personal property named in the Deed. This personal property was of the value of $2,776, (agreement of counsel.)

Aggregating the value of the lands, as settled by the agreement of counsel, at $43,300; the 4,585 acres not charged with debts amounting to $30,000, leaving as the value of the 2,185 acres charged with debts, $13,300.

Assuming that the 4,585 acres were worth $30,000; that the value of the personal property was $2,776; and that the debts charged on the 2,185 acres referred to, exceeded the value of the same, this would give us the total value of Mrs, Prewitt's settlement, $32,776. The 2,185 acres charged with the preferred debts being estimated at the amount before named, $13,200, and the lands of Prewitt not included in the

Deed, (4700 acres), being estimated at their agreed value, $9,400, makes an aggregate of $22,600 of real estate left subject to the claims of creditors, preferred or general. In other words, Mrs. Prewitt gets 4,585 acres of land, worth $30,000, and personal property worth $2,776, and there is left, liable to the creditors of Mr. Prewitt, 6,885 acres of land worth $23,600, and personal property to the value of $700.

Further, it is to be noted that there is no evidence, unless the Deed itself supplies it, of any combination between Mr. Prewitt, and his intended wife, to defraud his creditors, or of a knowledge by her of such an intention on his part. All that appears is that she knew he was indebted, but not to what extent, and refused to marry him except on condition of his making upon her such a settlement. The Deed itself supplies no evidence of fraud. It recites the considerations on which it was executed—the contemplated marriage, and the debts due the preferred creditors; but it does not state that the conveyance embraced the whole, or even the greater part of the grantor's estate, nor does it show that there were outstanding debts not provided for.

ASSIGNMENT OF ERRORS.

The Court below erred in decreeing the Marriage Settlement made by Richard Prewitt upon Josephine Prewitt void, and directing the property thereby conveyed to be turned over to the Assignee in Bankruptcy for administration.

THE LAW OF THE CASE.

I.

It is not possible that any serious question can be made as to the validity of the Deed, so far as it secures the debts of Bradley, Wilson & Co., and Walker, Brickell & Lewis. The agreement of counsel admits these debts as *bona fide*.—7 Ala., 151.

II.

The real question in the case is whether the settlement which is made by the Deed on Mrs. Prewitt can be sustained against the creditors of her husband, the grantor. The only consideration which Mrs. Prewitt gave for the settlement was *marriage*. This, however, was not only a *valuable*, but the *highest consideration known in law*.

Unlike other contracts, marriage is instituted by God

himself, and has its foundation in the law of nature.

Fraser Domestic Relations, 87.
Schuler's Domestic Relations, 24.

And it is wrong to apply the rules of ordinary contracts to the marriage relation.

1 Bish. Mar. & Div. 4th Ed. Sec. 18.

By the Common Law, the husband is bound to furnish his wife with a suitable home, to provide for her maintenance and support, and for the protection and education of the offspring of their union.

Schuler's Domestic Relations, 53.

"Marriage is attended and followed by precuniary consequences, by happiness or misery to the parties; by life to unborn children; by unquiet or repose to the State; by what money ordinarily buys, and by what no money can buy, to an extent which cannot be estimated, or expressed, except by the word infinite. To say, therefore, that it is to be regarded, when it is the inducement to any contract, as a *valuable* consideration, is to utter truth, yet only a part of the truth."

1 Bish. on Married Women, §775.

Lord Coke says, "there is no consideration so much respected in law as the consideration of marriage.,"

Co. Litt. 9 (6).

It is the consideration of marriage, which runs through the whole settlement or agreement, and supports every part of it, thus making marriage not only a high, but the highest consideration known to the law.

Schuler's Dem. Re. p. 263,
Ford vs. Stuart, 15 Beavan, 499.
Narvin vs. Prouse, 6 Vesey 752.
Peachey Mar. Settl. 56.

Chancellor Kent says, (2 Kents Comm. 165), "These Marriage Settlements are benignly intended to secure to the wife a certain support in every event, and to guard her against being overwhelmed by the misfortunes, or unkindness, or vices of her husband."

The Supreme Court of the United States has pronounced, that marriage of itself is not only a valuable consideration to support a marriage settlement, but "a consideration of the highest value."

Maguire vs. Thompson, 7 Peters, 348.

To the same effect are the following cases, in addition

to those supra:

Herring vs. Wickham, 29 Grattan 628. (A strong case.)
Armfield vs. Armfield, 1 Freeman, Ch. R. 311.
Sterry vs. Arden, 1 John, Ch. 221.
Same vs. same, on appeal, 12 Johnson, 536.
Johnson vs. Dillard, 1 Bay, 232--234.
Houston vs. Cantrell, 11 Leigh 136 (154--5) Turner vs. Trezevant. 2 Dessans, 264.
Wheelan vs. Wheelan, 3 Cowan, 538 (579)

Mr. Bishop says that marriage "is to be ranked among the valuable considerations, yet is distinguishable from most of these in not being *reducible to a value which can be expressed in dollars and cents*, while still it is, in general terms, of the very highest value."

1 Bish. Mar. Wom. § 776.

The leading English case on this subject is thus stated in Bright on Husband and Wife: "The efficacy of the consideration of marriage is strongly demonstrated in the following case: A, previously to and in consideration of his marriage with B, and in order to make a provision for himself and wife, and with a view of withdrawing out of the reach of his creditors, a considerable part of his property, transferred at various times, before the marriage, into her name, several sums of stock, and invested monies in her name, all of which, as it was stated in the bill, were not his own property, but that of other persons who had employed him as a stock-broker, and that the fact was well known to B. The marriage took place in the year 1805; and between that year and 1802, preceding, various deeds and settlements were executed by A in favor of B, containing (as it was alleged) false statements of property belonging to B, (which, in fact, never did belong to her), with the intent to defeat the husband's creditors, and with the like view, sums in stocks, amounting to £6,200 annuities, were, in the settlement made shortly before the marriage, recited, contrary to the truth, as belonging to her; and the same with other prop rty, was settled to her separate use for life, with an absolute power of disposition. B having survived her husband, his creditors attempted to defeat the above transactions and settlement, upon the ground of fraud, but which was not proved, and was denied by B. Sir William Grant, M. R., decided against the creditors; because it was immaterial whether the stock was, as recited, purchased with the wife's money or not, for if it were the husband's, he had a right to settle it in contemplation of marriage, which settlement could not be

defeated by his creditors; *and that the fact of his being indebted at the time, and of B's knowing it, would not affect the validity of the settlement*—and his honor thought that the misrecital of the property being the wife's when it was the husband's, did not necessarily imply fraud, since he might choose to adopt that mode in giving her the property."

2 Bright, 102.

The doctrine of this case has been followed both in England and in the United States; and the law is well settled, that the wife is deemed to be a purchaser of the property settled on her in consideration of marriage, and will hold it against creditors.

In the language of the Supreme Court of the United States, 7 Peters, 348, "from motives of the soundest policy, marriage settlements are upheld by the Courts, with a strong resolution.

See also Campion vs. Colton, 17 Vesey, 264–272.
Ex parte McBurney, 1 D. & G. M. and G., 446.
Ex-parte Gardner, 11 Vesey, Jr., 41, and notes.

III.

When a conveyance is founded on a valuable consideration (*ex gratia* money,) it cannot be held invalid as against creditors, unless fraud on them was actually concerted between both parties to the conveyance. If the conveyance is fraudulently meant by the grantor, but is for a sufficient valuable consideration, and the grantee has no knowledge of the grantor's fraudulent intent, and is without such intent himself, he cannot be deprived of his purchase. A mere knowledge on the part of the purchaser that the seller is insolvent, and that debts and judgments are outstanding against him, is not sufficient to render the conveyance fraudulent and void.

Kettridge vs. Sumner, 11 Pickering 50.
Violett vs. Violett, 2 Dana, 323.
Sisson vs. Roath, 30 Conn. 15.
Governor vs. Campbell, 17 Ala., 571.
Ala. Life Ins. Co. vs Pettway, 24 Ala., 544.
Hooks vs. Anderson, 9 Ala. 704.
Abercrombie vs. Bradford, 16 Ala. 560—570.
Price vs. Masterson, 35 Ala. 496.
Covanhoevan vs. Hart, 21 Penn. 495 (501).
1 Bish. Mar. Wom. §447.
Tyler Inf. & Cov. 465.
7 Peters, 348, Hollingsworth et al. vs. Thompson
Smith vs. McQueen, 55 Ala. 368.

If the purchase is for a valuable consideration, it is valid, even though the known effect of it may be to defeat or delay creditors, and the fact that the conveyance is of the grantor's entire estate, is not sufficient to stamp the transaction as fraudulent.

1 Bish., M. W. Sec., 748.
Young vs. Dumas, 39 Ala., 60.
Allen vs. Montg. R. R. Co., 11 Ala., 437.

The object of the Statute of Frauds and Perjuries was to prevent deeds, fraudulent in their *intention*, and not such as in their *effect*, might hinder or delay creditors. It is the corrupt and covinous motive—the *mind* with which a deed is made, or act done, that gives its character, without the existence of which, *fraud cannot be imputed.*

U. S. Bank, et als., vs Heath, 4 B. Mon., 423 (431.)

In Covanhovan vs. Hart, 9 Harris (Penn.) 501, the Court say: "We are not permitted to assign a bad motive to an act not wrong either in itself, or in its necessary consequences. A creditor is not acting wrongly when he receives payment, or takes security for his debt, though he knows that other persons, who have the same rights with himself, may be less vigilant or less fortunate. The act being right, no secret feeling can change its character. Indeed it may be said that the motive which results in proper action cannot be a bad one. A rule which requires a man to take care of his neighbor's interest at the expense of his own, is utterly impracticable; it runs against the bent of natural feeling which will not be crushed or extinguished. *Naturam expellas furca: tamen usque recurret.*"

The same principles apply to a conveyance in consideration of marriage, which, as we have seen, is not only a *valuable* consideration, but the highest consideration known in law.

Thus it is said by Story, J., in Magniac vs. Thompson, 7 Peters, 393—4:

"Nothing can be clearer, both upon principle and authority, than the doctrine, that, to make an ante-nuptial settlement void, as a fraud upon creditors, it is necessary that both parties should concur in, or have cognizance of the intended fraud. If the seller alone intends a fraud, and the other party has no notice of it, but is innocent of it, she is not and cannot be affected by it. Marriage, in contemplation of the law, is not only a valuable consideration to sup-

port such a settlement, but is a consideration of the highest value, and from motives of the soundest policy, is upheld with a steady resolution. The husband and wife, parties to such a contract, are, therefore, deemed in the highest sense, purchasers for a valuable consideration; and, so that it is *bona fide* and without notice of fraud, brought home to *both* sides, it becomes unimpeachable by creditors."

To the same effect is Campion vs. Colton, 17 Vesey, Jr., 264 (272) and notes.

This is also the settled doctrine in Alabama. In Andrews vs. Jones, 10 Ala. 400, (421), the Court says: "To make an ante-nuptial settlement void, as a fraud upon creditors, it is necessary that both parties should concur in, or have notice of the intended fraud. If the setler alone intended a fraud, and the other party had no notice of it, she is not and cannot be affected by it."

In 28 Ala. 444, the Court say: "The considerations of marriage settlements is never closely scanned. The only question is whether it is an honest agreement."

Tyler on Infancy and Coverture, p. 464, say: "A Court of Equity will always support a marriage settlement, if no particular evidence of fraud is made out showing an intention to deceive and defraud creditors."

Bishop states the doctrine on this subject as follows: "If a man, wishing to enter into matrimony with a particular woman, should, being insolvent, convey to her *all his property*, which was accepted by her, *with full knowledge of the fact*, the nuptial intent being not to defraud his creditors, as a *primary object*, but to contract marriage, each, *on such terms as could be reasonably procured from the other*, the case would not be within either of the statutes of Elizabeth. Neither would it be in violation of any principles of the common law, beuause, the common law, though it abhors every sort of cheating, loves matrimony,—its principles all point towards it, whenever the circumstances of a case expose them to this attractive force."

1 Bishop Mar. Wom. §784.

Applying these principles to to this case, the validity of the settlement is placed beyond controversy.

In the first place the conveyance was not of all the grantors property.

In the second place, it does not apear that Mrs. Prewitt knew that Mr. Prewitt was insolvent. All that is shown is

that she knew he was embarrassed. (See Frowe vs. Smith, 10 Ala,, 571.)

In the third place, even conceding that the conveyance embraced all of the grantor's estate, it is not shown that Mrs. Prewitt knew it.

In the fourth place, the primary object of the parties—certainly of Mrs. Prewitt—was to secure a settlement—not not to defraud the creditors of Prewitt, as is apparent from the fact, clearly proven, that the *grantor tried, and failed to procure the marriage without the settlement, and that the settlement, though not the sole, was an indispensable inducement to the marriage, on the part of Mrs. Prewitt.*

It is plain from the authorities before cited, that, even if it were shown that the conveyance settled the grantor's entire estate on Mrs. Prewitt, and that when she accepted the Deed she knew this, and also knew that he was insolvent, and if it were further shown that Prewitt, the grantor, in making the settlement intended to defraud his creditors, still the transaction would be valid as respects Mrs. Prewitt, unless she participated in the fraudulent purpose. *A fortiori*, it cannot be held invalid when it is shown that the conveyance did not embrace all the grantor's estate, and that, of that which it did embrace, more than one-third in value was charged with *bona fide* debts, exceeding in amount the value of the property as charged, and when the only knowledge Mrs. Prewitt is shown to have had of her husband's pecuniary condition was merely that he was embarrassed and indebted.

In a case of this nature, two facts must be established before the conveyance can be held invalid.

First. That the primary purpose of the grantor was to defraud his general creditors, rather than to perform his marriage contract.

Second. That the grantee knew this when she accepted the conveyance.

These indispensable facts must be established by proof, not merely conjecture or suspicion.

Ruhl vs. Phillips, 48 N. Y., 125.
Jalger vs. Kelly, 52 N Y., 274.
Smith vs, B. B, White, 21 Ala., 125.
Ala. L. I. & T, Co. vs. Pettway, 24 Ala., 566.

It is not proved in this case that the primary purpose of the grantor was to defraud his creditors, rather than to pro-

cure the marriage. If such was his purpose, why did he attempt to effect the marriage without making a settlement?

But if the controlling purpose of the *grantor* was to defraud his creditors, where is the evidence that Mrs. Prewitt knew it? She knew that he had tried to marry her without a settlement. Was this effort calculated to notify her that, in afterwards marrrying her with a settlement, his main object was, not the marriage, but the settlement, and that the latter was contrived, not because he wanted to marry her, but because he wished to defraud his creditors, when the settlement, on its face, provided for some of the creditors, and these, so far as the proof shows, were the only creditors known to Mrs. Prewitt?

She is a purchaser—a purchaser for value—and is to be treated like any other purchaser for value, with this difference, that the consideration she gave is of the very highest value known to the law. Suppose that instead of giving the consideration of marriage, she had bought the property for $30,000 in money, and had known when she bought it, precisely what proportion of the grantor's estate her purchase included, and that the grantor was insolvent, and that the necessary effect of her purchase would be to hinder and delay his creditors: There could not be a doubt that, in the absence of other evidence showing actual fraud, such a purchase would be upheld.

Young vs. Dumas. 39 Ala., 60.
21 Penn., 495, (501). And authorities *supra*.

On what ground, then, can this settlement, which is founded upon a consideration of such infinite value, that it cannot be measured by dollars, be invalidated?

As the wife may stipulate for a settlement on marriage, what rule of law prohibits her from making the best bargain she can? The Court will not weigh with exact scales, the consideration.

28 Ala., 432, (444). Andrews vs. Andrews.

As the effect of fraud is to divest the wife of all interest, the proof to establish fraud should be most convincing.

Hoot vs. Sorrel, 11, Ala., 400.

In Thompkins vs. Nichols & Jamison, 53 Ala., 197, the Court held that the positive answers and testimony of the vendor and vendee, denying all fraud and intention to defraud creditors, and setting up a *bona fide* conveyance, for a valuable consideration, are not overcome by the testimony of two witnesses who testiy to only facts and circumstances

creating mere suspicion. And the Court further held in that case, that fraud will not be imputed when the facts and circumstances out of which it must arise, may consist with pure intention. To create an imputation, the facts must be such that they are not explicable upon any other reasonable hypothesis.

Bump, in his works on Fraudulent Conveyances, p. 562, says: "While the law abhors fraud, it is also unwilling to impute it on slight and trivial evidence, and thereby cast an unjust reproach upon the character of the parties. Such an imputation is grave in its character, and can only be sustained on satisfactory proof. If the evidence is so conflicting, that no conclusion can be reached, the transaction must be sustained upon the principle that the burden of proof is on the party who assails it, and if he does no more than create an equilibrium, he fails to make out his case. Mere suspicion, leading to no certain results, is not sufficient. A legal title will not be divested upon mere conjectures, or evidence loose and indeterminate in its character. Fraud will never be imputed where the circumstances and facts upon which it is predicated, *may consist with honesty and purity of intention.*"

It is no where shown in the proof that Mrs. Prewitt had any knowledge of the extent of her husband's indebtedness, and there is certainly no *scintilla* of evidence that she knew of any fraudulent intent on his part to hinder, delay and defraud his creditors generally.

Summing up the argument on this point, Mrs. Prewitt was a *purchaser* of the property settled on her, for a consideration of the highest value, and a Court of Equity will not deprive her of the property so purchased, without distinct proof showing either an actual intent to defraud on her part, or such plain knowledge by her of a clearly proved intent to defraud on the part of the grantor as would make her *particeps de icti*. But her whole conduct is inconsistent with this supposition.

There is almost as little reason to believe that the husband intended any fraud upon his creditors. The very character and nature of the settlement excludes that idea. For, if he had intended to defraud them, he would have conveyed his whole property, and would have concealed from his wife, and not have communicated to her his embarrassed condition. But the answers of the defendants deny all fraud. They were required by the complainant to be sworn to.

They are responsive to the Bill and to the interrogatories propounded in the Bill. The complainant has taken no evidence to disprove them. In this state of the case, the rule is, that, when the answer is verified as required by the Bill, it operates so far as responsive, as evidence for the defendant, and must prevail unless disproved by two witnesses, or by one witness, with corroborating circumstances.

Marshall vs. Croom, 52 Ala., 554.

It has always been the settled law of the State of Alabama that if a Bill charges fraud, and the answer denies it, the answer, if uncontradicted, is conclusive evidence for the defendant.

Smith vs. Rogers, 1 S. & P. 317.
Branch Bk, Huntsville, vs. Marshall, 4 Ala., 60.
Marshall vs. Croom, 52 Ala., 556.

Judge Story says: (2 Story's Equity Jurisprudence, section 1528), "It is an invariable rule in equity, that where the defendant, in express terms, negatives the allegations of the Bill, and the evidence is only one person offering as a witness what has been so negatived, the Court will neither make a decree, nor send the case to be tried at law, but will simply dismiss the Bill. The reason upon which the rule stands is this: The plaintiff calls upon the defendant to answer an allegation of fact, which he makes; and thereby, he admits the answer to be evidence of that fact. If it is testimony, it is equal to the testimony of any other witness; and as the plaintiff cannot prevail unless the balance of proof is in his favor, he must either have two witnesses, or some circumstances in addition to a single witness, in order to turn the balance.

IV

It is insisted, however, by the appellee, and was intimated by the court below, that the grantor intended fraud, because he had previously made a deed conveying part of the land to his son-in-law, Bates. How the conclusion follows from the fact we cannot see. But the fact itself is not admissible in evidence, and must be excluded from the consideration of the Court. No act or declaration of a grantor, made before or at the time, or after executing a conveyance, not in the presence of the grantee, can be received to affect the validity of the conveyance.

Bump. Fraud. Convey. p. 48, and authorities there cited.
1 Greml. Ev. p. 243, §181.

40 N. Y. Rep. 221, Cuyler vs, McCartney.
2. Peters, 107 Venable et al. vs. Bk. U. S.
Jones vs. Morris, 2 Ala., 526.
Hodges vs. Thompson, 9 Ala., 131.
Price vs. Branch Bk. 17 Ala., 374.
Etting vs. Branner, 17 Ala., 706.
Ford vs. Cobb, 18 Ala., 365.
Reed vs Smith, 14 Ala., 380.
Pulliam vs. Newberry, 41 Ala., 168.

For if they could, the rights of a grantee could be prejudiced by acts and declarations of which he has no knowledge, and with which he has no connection. So far as the proof discloses, Mrs. Prewitt had not before her marriage, and has not now, any knowledge of this deed, dated Nov. 20th, 1865. The proof, however, shows that before there was a promise of marriage, and before the making of the settlement, that deed was rescinded. So the Deed never had any connection with or relation to the marriage settlement.

It is further insisted, that, on the 16th of July, 1866, after the execution of the marriage settlement, Prewitt conveyed all his lands, not conveyed by the marriage settlement, to his son-in-law, Bates, and in December, 1868, went into Bankruptcy, surrendering only his wearing apparel, of the value of fifty dollars, and scheduling his debts as exceeding $100,000.

Occurring after the marriage settlement, no one of these facts is admissible in evidence. This rule is firmly established, and is supported by the authorities cited *supra*.

But these facts, even if they were admissible, are not evidence of fraud. The validity of the deed to Bates is not in question here. No decree the Court can render, will either affirm or impair the validity of that deed. So far as the record discloses, it was made to pay a debt justly due to the son-in-law.

Nor is Prewitt's Bankruptcy, or what he surrendered, or did not surrender in that proceeding, legitimate matters of enquiry in this case. It was the province of the creditors, if not satisfied, to have assailed it in the Bankruptcy Court. It cannot be made an instrument of evidence against his wife, on any question at issue here, occurring, as it did, more than two years after the execution of the marriage settlement.

V

Further, this settlement strips Mrs. Prewitt of her contin-

gent right of dower, for in no event could she assert it without surrendering all claims under the settlement. This contingent right of dower is an encumbrance on the lands, and if the settlement had not been made, its release or conveyance would have been a valuable consideration, supporting a conveyance by the husband to the wife.

Hoot vs. Scrrel, 11 Ala., 386.
Parks vs. Brooks, 16 Ala., 526.

The value of this contingent right of dower is not susceptible of accurate estimation. The statute of Alabama, however, provides, that when lands are sold by an executor or administrator for the payment of debts, the widow may consent to a sale of her dower right being included, and that the Probate Court can allow such part of the proceeds, not exceeding one-sixth, as it may deem proper, considering her health and age.

Rev. Code, §§ 2229, 2231.
Code of 1876, §§ 2469, 2471.

Now, when this marriage occured, and this settlement was made, the wife was about twenty years of age, and the husband fifty-seven years of age. The fair supposition, therefore, was, that she would survive him, and her contingent right of dower, thus ripen into an absolute right. Suppose Richard Prewitt had died the day after the marriage, and the lands had, under a decree of the Court of Probate, been sold by his administrators, for the payment of debts; is there any doubt that the Court would have allowed her one-sixth of the proceeds of sale in compensation for her dower? Without considering the relative ages of the husband and wife, the uncertainty of the time when the dower interest will become an absolute right, and of its duration, always renders it such an encumbrance on land, as to reduce its value, in the estimation of the purchasers, to almost one third. Viewing this case in the light of the facts, so far as we have any rule to guide us, the value of this contingent right of dower was reasonably and fairly one-sixth of the entire value of all the lands. According to this standard we find that Prewitt had conveyed to his wife, in excess of the value or the dower interest, about $8,500, in property, in consideration of the marriage, after the payment of the debts charged upon it.

This woman was in the morning of life, her husband in the "sear and yellow leaf." There is no law which could justify the Court in declaring the settlement unreasonable, un-

less it disregards Magniac vs Thompson, 7 Peters; Campian vs. Cotton, 17 Vesey; Hoot vs. Sorrel, 11 Ala.; Herring vs. Wickham, 29 Gratton, 628. and the many other authorities heretofore cited—and, indeed, the universal law of marriage settlements.

The case of Thompson vs. Graves, cited from Riley's South Carolina Reports, is the *only* case to be found in which a marriage settlement was vacated for fraud, and that was an extreme case—a pure and simple contrivance to defraud creditors, with no gauze of truth to conceal its nakedness. It was a settlement on the wife of all her *own* large fortune, and *all* the husband's too. The wife having a large fortune, there was neither a necessity nor excuse for the settlement of the husband's property on her. But in this case, the property of the wife is not only inconsiderable, but was wholly inadequate to her support, or the support of the issue of the marriage. The property conveyed to the wife is charged with $18,000 of the husband's indebtedness, and other property is reserved from the conveyance of the value of $22,600.

VI

It is urged, however, that the Deed is void on its face, because it reserves to the grantor the use and possession of the property during his life, or during the marriage, and entitling him to the rents, issues and profits. There is no such reservation in the Deed. But, it is said, the law gives him, as Trustee of the wife's separate estate, the right to the rents, issues and profits, and the Deed must be read as if the Statute was incorporated in it. Now, the vice of this argument is, that the Deed does not create a statutory separate estate, as we will hereafter show, but an estate wholly different in all its incidents and qualities. Proceeding for the present, on the supposition, that it did create such statutory separate estate, there is no such reservation of interest under the deed, as affects its validity. This is a right created by law, not by the Deed, and if the Deed had expressly declared that Prewitt, as Trustee of his wife, should have the rents, issues and profits, it would have been a mere declaration of the legal effect of the deed, and not the reservation of a right or interest under the deed.

Johnson vs. Cunningham 1 Ala., 249,
Hindman vs. Dill & Co., 21 Ala. 689.
Miller vs. Stitson & Co., 32 Ala., 161.

Apart from this, the reservation of the rents, issues and profits, to the husband, as trustee, would not be for his benefit. He would take and hold it only for the benefit of his wife, and the children, and if he failed or refused so to apply them a Court of Chancery would remove him.

Boaz vs. Boaz, 36 Ala., 334.
Worfield vs Davins and wife, 38 Ala., 524.
Hays vs. Cockrell, 41 Ala., 84.
Patterson vs. Flanagan, 37 Ala., 518.
Marsh vs. Marsh, 43 Ala., 678.
Roper vs. Roper, 29 Ala., 247.

But the Court will find on reading this deed, that it cuts off every marital right, power, and incident, which could accrue to the husband; and expressly vests the income, rents, issues, and profits, in the wife, taking them from the husband. The estate thus created in the wife, is not a separate statutory estate. A statutory separate estate is one, of which the husband, as Trustee, is entitled to the rents, profits and income; not one in which these are secured to the wife. In other words, it is an estate, in which there are marital rights, incidents and powers, attaching to the husband, as husband.

But excluding, as it does, all marital rights of the husband, and vesting in the wife the right to rents, issues, and profits, it creates a different estate from that created by the statute.

Whatever power the husband has over this estate, he has, merely because the law makes him trustee. It is power simply—only a naked trust, not interest. And the law creates him trustee for the wife's benefit and protection, and not for his own advantage.

Gerald vs. McKenzie, 27 Ala., 166

The estate created by this deed is a common law, or equitable, separate estate in the wife, and has none of the incidents of a statutory separate estate. This character of estate always results, when the intent to exclude the marital rights of the husband clearly and unequivocally appears from the force and certainty of the terms employed.

Short vs. Battle, 52 Ala., 456.
Miller vs. Voss, Taylor & Co., 62 Ala., 122.

As to what is, or is not, a statutory separate estate, under the laws of Alabama, the Alabama Supreme Court, in Miller vs. Voss, Taylor & Co., 62 Ala., 122, dissents, from the opinion in Lippincott vs. Mitchell, 4 Otto, 767.

VII

It is said that the deed was made in secret. This is not the fact. The deed was prepared and signed by Prewitt in Huntsville, on the 27th of April, 1866, was regularly acknowledged by him, on the same day, before the Judge of the Madison Probate Court, was delivered to Mrs. Prewitt on the 5th day of May, 1866, and was regularly recorded on the 5th of June, 1866.

It is said that, "the execution of this Deed was falsely acknowledged." This is not the fact. The deed was signed and acknowledged on the same day, and delivered by the grantor to the grantee, (who lived in a distant county), five days afterwards. The signing and acknowledgment of a deed by the grantor and its delivery on a subsequent day to the grantee, is a matter of every day occurrence, and the idea that such a deed is *falsely acknowledged*, does not require refutation.

It is said that the want of attesting witnesses to the deed indicated secrecy in its execution, plain enough to arouse Mrs. Prewitt's suspicion. As if a formal acknowledgment before a pub'ic officer was not as inconsistent with secrecy as the attestation of a subscribing witness!

It is said that the premature acknowledgment is inconsistent with a fair purpose. As if an acknowledgment in Huntsville, where the deed was drawn and signed, and on the same day, was more inconsistent with a fair purpose, than an acknowledgment in Tuscaloosa county, five days afterwards, would have been!

It is said that the fact that the grantor continues in possession and management of the property, is indicative of fraud. And this is gravely urged, though the conveyance was regularly recorded, and the grantor, (no trustee being appointed) was trustee for his wife, and his possession was her possession.

It is said, the execution and provisions of Mrs. Prewits will indicate that there was a secret trust between the parties, and an intention to defraud Mr. Prewitt's creditors. This will was made on the 16th of July, 1866, more than two months after the deed was executed, and when Mrs. Prewitt was in delicate health.

No fair mind can find in the making of such a will, at the time and under the circumstances mentioned evidence

of fraud. It is in proof that the husband never knew any of the terms of the will until the suit was brought. He knew nothing beyond the fact that his wife had made a will

It may be true, when this will was written, that Mrs. Prewitt knew that her husband was insolvent. Under the influence of this knowledge, it was her duty as a good wife, anxious to protect her husband in his old age, so to devise her property as to provide against its seizure for his debts. If she had a right to contract for it in consideration of marriage, she certainly had the right, when it became hers, to make such disposition of it as she considered proper. Her *jus disponendi* was absolute, and the manner of its exercise is no evidence of fraud, by which to connect it with the marriage settlement.

VIII

The validity or invalidity of this deed is to be determined by the decisions of the Supreme Court of Alabama; for the decisions of the State Courts, in so far as they settle rules of property, are uniformly followed by the Supreme Court of the United States.

Lippincott vs. Mitchell, 4 Otto, 767 (770)
Olcott vs. Bynum, 17 Wall, 44.
Leflingwell vs. Warner, 2 Black, 579.
7 Peters, 615. 2 Woods, 468.

In addition to the Alabama cases above referred to, as persuasive to show what the law of this particular case is in Alabama, we state that the Chancery Court in the case of Lile vs. Prewitt, referred to in the Record, and which involved the validity of this marriage settlement, the bill having been filed to set it aside upon the ground of fraud, upheld and sustained the settlement and dismissed Lile's bill. The case was appealed by Lile to the Supreme Court of Alabama, where it is now pending.

L. P. WALKER,
J. T. MORGAN,
for Appellants.

FILED
OCT 18 1880
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SUPREME COURT OF THE UNITED STATES.

No. 320.

RICHARD PREWIT AND JOSEPHINE PREWIT,
APPELLANTS,

VS.

ROBERT H. WILSON,
ASSIGNEE OF RICHARD PREWITT, BANKRUPT, APPELLEE.

BRIEF OF F. P. WARD FOR APPELLEE.

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BRIEF OF F. P. WARD FOR APPELLEE.

This is a suit in equity by the Assignee to set aside an ante-nuptial settlement, alledged to have been executed by the Bankrupt to hinder, delay, and defraud his creditors, and accepted by the grantee with knowledge of the grantor's fraudulent purpose.

FACTS OF THE CASE.

On April 27, 1866, Richard Prewit signed and acknowledged the execution of the deed of marriage settlement, in favor of Josephine Prewit, who became his wife on May 6, 1866. Record, page 30, line 35.

The deed conveyed to Mrs. Prewit land worth thirty thousand dollars, and personal property worth twenty-seven hundred seventy-six dollars, besides other lands worth thirteen thousand three hundred dollars, but charged with payment of debts of the grantor to the amount of eighteen thousand dollars. P. 41, l. 25.

The lands were situated partly in Franklin County, Alabama, but mainly in Lawrence, where Prewit resided. And the personal property consisted of farm stock and utensils, and household furniture, on the land, and seed cotton then being ginned. P. 41, l. 23; p. 6, l. 5.

Prewit was fifty-eight years old, and Mrs. Prewit twenty years old. P. 31, l. 48. She resided with her father, mother, and eight brothers and sisters, in Tuscaloosa County, Alabama, and owned property of less than one thousand dollars in value. P. 35, l. 44.

Prewit reached Tuscaloosa County, on the occasion of his marriage, on May 3, 1866 (p. 33, l. 35); but did not deliver the deed of settlement to Mrs. Prewit until May 5 or 6. P. 30, l. 41; p. 35, l. 34.

On June 25, 1866, Prewit gave in for taxation the lands in Lawrence County, as the property of his wife, and gave in no property of his own for taxation that year. P. 41, l. 34.

On November 20, 1865, Prewit had conveyed to his son-in-law, Bates, 4405 acres of land in consideration of a recited cash payment of $25,982; but in fact with a secret understanding that Bates should take the land at that price and pay Prewit the difference between that sum and Prewit's indebtedness to him, which was not then ascertained. P. 33, l. 26.

Over one thousand acres of the land conveyed to Bates by deed of November 20, 1865, was embraced in the marriage settlement. P. 12, l. 30.

On July 16, 1866, Mrs. Prewit made a will attempting to secure the property to Prewit, free from liability for his debts, in the event of her death. P. 36, l. 27. And on the same day Prewit conveyed to Bates 3800 acres of land in payment of a recited debt, due by account stated that day, for ten years services as overseer, seven and a half years hire of one slave, and the sale of a horse, with interest on these items amounting to $185 60. P. 34, l. 20; p. 41, l. 37.

The 3800 acres of land conveyed to Bates on July 16, 1866, was worth $7600. P. 41, l. 40.

On December 31, 1868, Prewit was duly adjudged a Bankrupt on his own petition. On January 27, 1869, Appellee was duly appointed Assignee of his estate in Bankruptcy, which was duly

assigned and conveyed to him on the same day. See answers of defendants: P. 11, l. 7; p. 16, l. 23; p. 20, l. 34. Brooks *vs.* Byam, 1 Story R., 296, 303.

Prewit embraced none of the property claimed to have been owned by him on April 27, 1866, in the inventory annexed to his petition in Bankruptcy. P. 15, l. 1.

Mrs. Prewit never mentioned to her father, mother, or any brother or sister, the agreement for the settlement; nor showed the deed of settlement to any one before July 16, 1866. P. 36, l. 19.

Prewit remained in control and management of the property after marriage without account of rents and profits. P. 34, l. 54.

Mrs. Prewit knew of Prewit's embarrassment by debt at the time of her marriage, and on account of that knowledge stipulated for the settlement. P. 45, l. 11.

The deed of marriage settlement embraced substantially all of Prewit's property. This is denied, but shown by admitted facts. He says he owned other lands containing, he thinks, about forty-seven hundred acres, worth three dollars per acre, and personal property worth six or seven hundred dollars. P. 14, l. 47.

But he had previously executed a deed to Bates for about 4400 acres. This deed, he says, had been surrendered to him, but never cancelled, and without reconveyance of the lands. P. 33, l. 41.

Over one thousand acres of this land was embraced in the marriage settlement. P. 12, l. 30.

On June 25, 1866, he gave in no property of his own for taxation. P. 41, l. 34.

On July 16, 1866, he conveyed to Bates 3800 acres. P. 34, l. 20; p. 52, l. 47.

The Ashford land North of the railroad is admitted to have been encumbered by a vendor's lien to the amount of its value. P. 14, l. 51.

There is no evidence of any other disposition of property by him.

And no property was surrendered by him in Bankruptcy. P. 14, l. 56.

Prewit owed debts to the amount of seventy-two thousand dollars, besides those secured by the deed of marriage settlement, which were set forth in the schedule annexed to his petition in Bankruptcy. P. 41, l. 30. And of these debts more than thirteen thousand dollars had been proved against his estate in Bankruptcy before the filing of the bill in this cause. P. 62, l. 46.

LAW APPLICABLE TO THE CASE.

Marriage is a valuable consideration for the conveyance of property. But it must be in good faith, and free from any knowledge or notice, on the part of the wife, of any intent, on the part of the husband, to hinder, delay, or defraud his creditors.

The case of Cadogan *vs.* Kennett, 2 Cowper, 432, was a contest, like this, between a creditor of the grantor and the grantee in a marriage settlement. And Lord Mansfield said, viz:

"The question in every case is whether the settlement is a *bona fide* transaction, or whether it is a trick and contrivance to defeat creditors.

"Such a construction is not to be made, in support of creditors, as will make third persons suffer. But if the transaction be not *bona fide*, the circumstance of its being done for a valuable consideration will not, alone, take it out of the Statute.

"I have known several cases where persons have given a full and fair price for goods, and where the possession was actually changed, yet being done for the purpose of defeating creditors, the transaction was held fraudulent, and therefore void."

In Magniac *vs.* Thompson, 7 Peters, Judge Story said, viz:

"The husband and wife parties to such a contract (a marriage settlement) are therefore deemed, in the highest sense, purchasers for a valuable consideration: and so that it be *bona fide* and without notice of fraud, brought home to both sides, it becomes unimpeachable by creditors. 393–4.

"Fraud may be imputed to the parties, either by direct co-operation in the original design at the time of its concoction, or by constructive co-operation from notice of it, and carrying the design, after such notice, into execution. 394

"But the case was of marriage articles about to be executed by all the parties upon negotiation then had between them for that

purpose; and of course if there was a fraudulent design known to all the parties at the time, the very execution of the articles made them all equally participators and parties to the fraud. It necessarily involved combination and participation and preconcert. Notice under such circumstances necessarily included participation in the fraud. It was not possible that the wife and her trustee, with notice of an intended fraud on the part of her husband, could execute the instrument without being in the sense of the law *particeps delicti*." 394–5.

Judge Baldwin, on the trial of this case in the Circuit Court, said, viz:

"If it (the marriage settlement) had comprehended the whole of his estate, and the certain consequence of being carried into effect, or the intention of the parties had been to exclude the plaintiff from payment of his debt under cover of his agreement, on the equity side of this count we would give him relief." 370.

Bump on Fraudulent Conveyances say, viz:

"It is not to be understood that because marriage is equal to a money consideration, it is to be considered in the nature of an actual purchase.

"A settlement is not intended as the price of the wife, but as a provision for the family. It must, therefore, be reasonable, and with a due regard to the rights of others.

"Although marriage cannot be estimated in dollars and cents, yet some idea can be formed of what would constitute a comfortable provision for a family at the commencement of married life. And in forming a judgment of the *bona fides* of the transaction, an inquiry will be made as to the value of a man's property, the amount of his debts, the general state of his property, and the value of that belonging to his wife; and if the provision is found greatly disproportionate to his means, having a regard to all these circumstances, it can not fail to excite a suspicion of fraud.

"Although marriage is a good consideration, and a settlement founded thereon may prevail against creditors, it is not necessarily so, under all circumstances."

Bump on Fraudulent Conveyances, 310, citing
Simpson vs. Graves, 1 Riley Ch., 232.
Ex parte McBurnie, 1 D., M. & G., 441.
Croft vs. Arthur, 1 Dessau, 223.

"If there is an intent to hinder, delay, or defraud creditors, and to make the celebration of a marriage a part of a scheme to protect property against the right of creditors, the consideration of marriage can not support the settlement."

Bump, 308, citing
Columbine vs. Penhall, 1 Sm. & Giff., 228.
Ex parte Mayor Mont., 292.
Bulneer vs. Hunter, L. R., 8 Eq., 46.

"Notice of fraud to the wife may be inferred from the facts and circumstances of the settlement."

Bump, 309.

"If the amount of property settled is extravagant or grossly out of proportion to the station and circumstances of the husband, this of itself is sufficient notice of the fraud."

Bump, 309, citing
Ex parte McBurnie, 1 D., M. & G., 441.
Croft vs. Arthur, 3 Dessau, 223.

CONCLUSION.

The war had liberated Prewit's slaves, swept off most of his personal property, and left him, at fifty-eight years of age, indebted nearly a hundred thousand dollars, and possessed of about fifty thousand dollars worth of property.

His first purpose was to secure a part of his lands, by the conveyance to his son-in-law, Bates, in November, 1865. The apprehension arose that the consideration of that conveyance might be impeached. The deed recited a payment of $25,982. How could Bates's ability to pay that sum be shown? If they undertook to show a debt of Prewit's to Bates of that amount, it must be by an account for services, hire of a slave, and sale of a horse. Could such an account by a son-in-law against an insolvent father-in-law, for ten years services as overseer, hire of one slave for seven and a half years, and the sale of one horse, without a single credit or partial payment, and without any pretense of previous contract or acknowledgment of the debt, be expected to sustain a purchase of property worth $25,982, when assailed by creditors for fraud?

Then came the suggestion that a marriage settlement would be preferable, as it relieved him from simulating a consideration, and

under it he thought he could save all his property. He engaged to marry, had the deed of settlement written, signed and acknowledged on April 27, 1866, married on May 6, and on July 16, when his wife made a will securing, as they supposed, the property to him free from liability for debts, in the event of her death, conveyed the balance of his property, about 3800 acres of land, worth $7600, to Bates in payment of his pretended debt of $18,560.

That Mrs. Prewit knew of her husband's fraud, and participated in it, is equally clear. She engages to marry him without any offer of a settlement, withdraws from that engagement without assigning any reason, and accepts his proposition of marriage accompanied with the offer of a settlement. Does not the presumption arise that the withdrawal from the first engagement was simulated, and at his suggestion, to give him an opportunity to offer the settlement? That it was, as they both say, an offer to settle "a large amount of real estate and some personal property" without designating either, corroborates the presumption. They say that she was to approve the settlement. But, if acts speak louder than words, neither of them so understood it. In Alabama a deed of land must either be attested or acknowledged after execution, which includes delivery and acceptance. Now, Prewit acknowledged the execution of the deed, as soon as it was written, in Mrs. Prewit's absence. He must have felt authorized to dispense with an actual delivery. They left her father's house on May 5, and went to John Prewit's, where they were married on May 6. They both say the deed was delivered before the marriage, but whether on the day of the marriage or the day before, they are not certain. The deed must have been delivered at John Prewit's to leave any doubt about the day of delivery; for they left her father's on the day before the marriage, and were not there on the day of marriage. It was only at John Prewit's that the deed could have been delivered on either day. That Prewit did not deliver the deed until after she left her father's to be married, which was two days after Prewit's arrival there, shows that he did not consider her approval a condition precedent. And that he managed and controlled the property after marriage, without keeping any account of the rents and profits, shows that he did not understand her as distrusting his capacity or affection, but only the liberality of his creditors. Mrs. Prewit's actions contradict her declarations as

strongly as Prewit's. She stipulates for a settlement of no particular property. She leaves home to marry him without the delivery of the deed of settlement. She never informs her father, mother, or any brother or sister, of the promised settlement, nor shows the deed to any one before or after her marriage. She allows her husband to manage and control the property without accounting for rents and profits, exempts him from giving bond as executor of her will, and attempts to secure the property to him, in the event of her death, free from liability for his debts. If the deed was, in fact, ever delivered to her, it informed her that the settlement embraced twelve separate tracts of land, containing in the aggregate, sixty-seven hundred and seventy acres, and horses, mules, cattle, hogs, farming utensils, household furniture, and seed cotton then being ginned. The sweeping character of the deed indicated that it embraced all his property. In her answer to the bill of John A. Lile, Administrator, assailing the same settlement, which was noted and relied on as evidence for her, she admitted, "that it was because of her knowledge of the embarassed condition of the said Richard that she stipulated, at the time of her engagement of marriage aforesaid, for the promises, covenants and undertakings of the said Richard, particularly set out and described in the deed of conveyance aforesaid."

She could not know that he was embarassed by debts and that he was conveying all his property, without knowing that the effect of the conveyance would be to hinder and delay his creditors. Her stipulation did not provide for charging the property to be conveyed to her with the payment of any of his debts. What explanation could he have given her for charging it with the debt of fifteen thousand dollars to Bradley, Wilson & Co., except that he desired to secure them, and had no other way of doing so? And did not charging the land with the lawyer's fee for writing the deed, indicate that it left him without the means of paying that?

Chapman, the Assignee of Bradley, Wilson & Co., does not join in this appeal. If there was any error in decreeing against the validity of his lien, it would be error without injury to the appellants. And the argument on that point in the case is therefore omitted.

F. P. WARD,
of Counsel for Appellee.